

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,378
354

SOUTHERN PACIFIC COMPANY, ET AL., *Appellants,*

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND
ENGINEMEN, *Appellee.*

APPEAL FROM ORDERS OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 3 1966

Nathan J. Paulson
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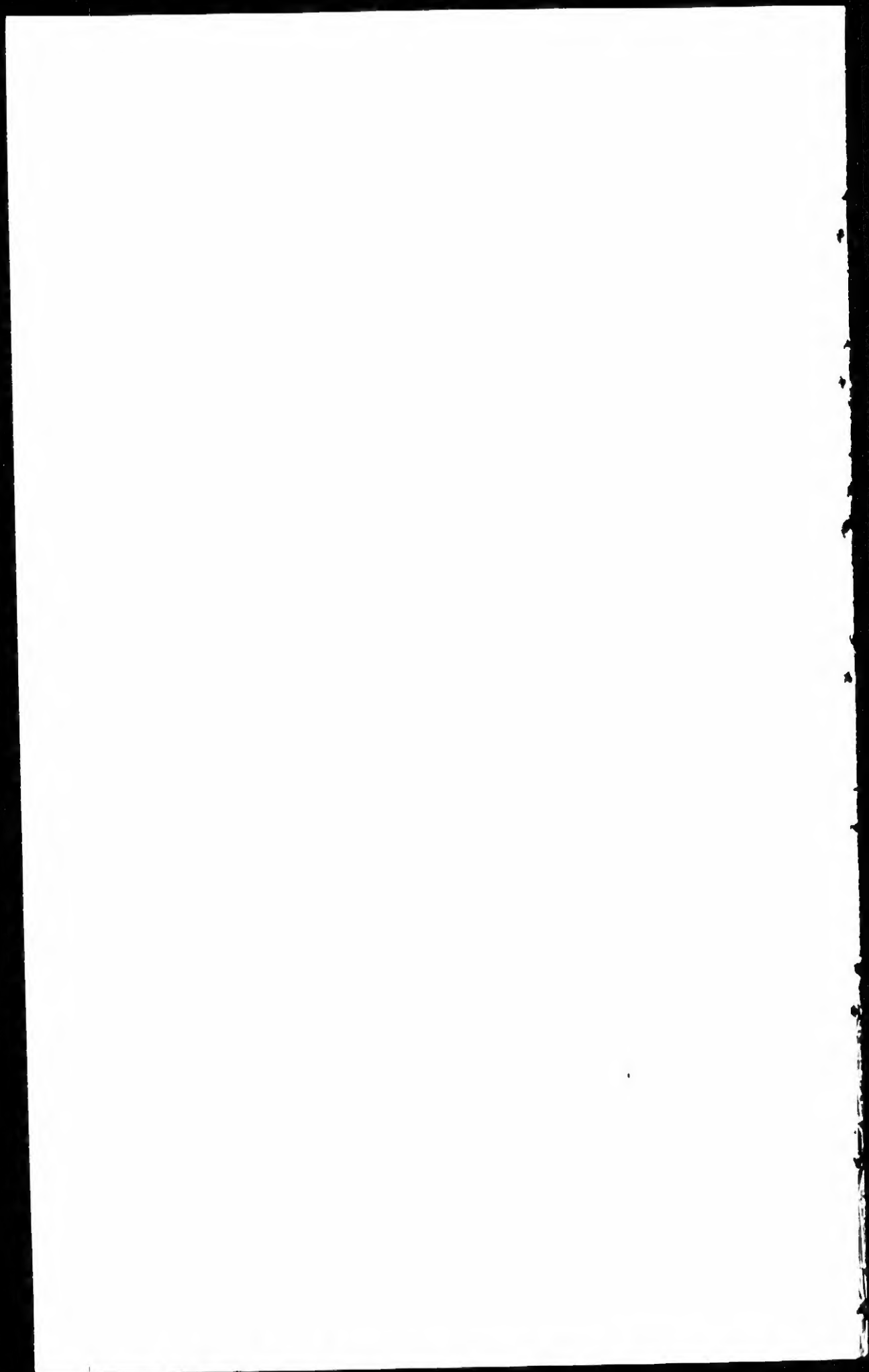


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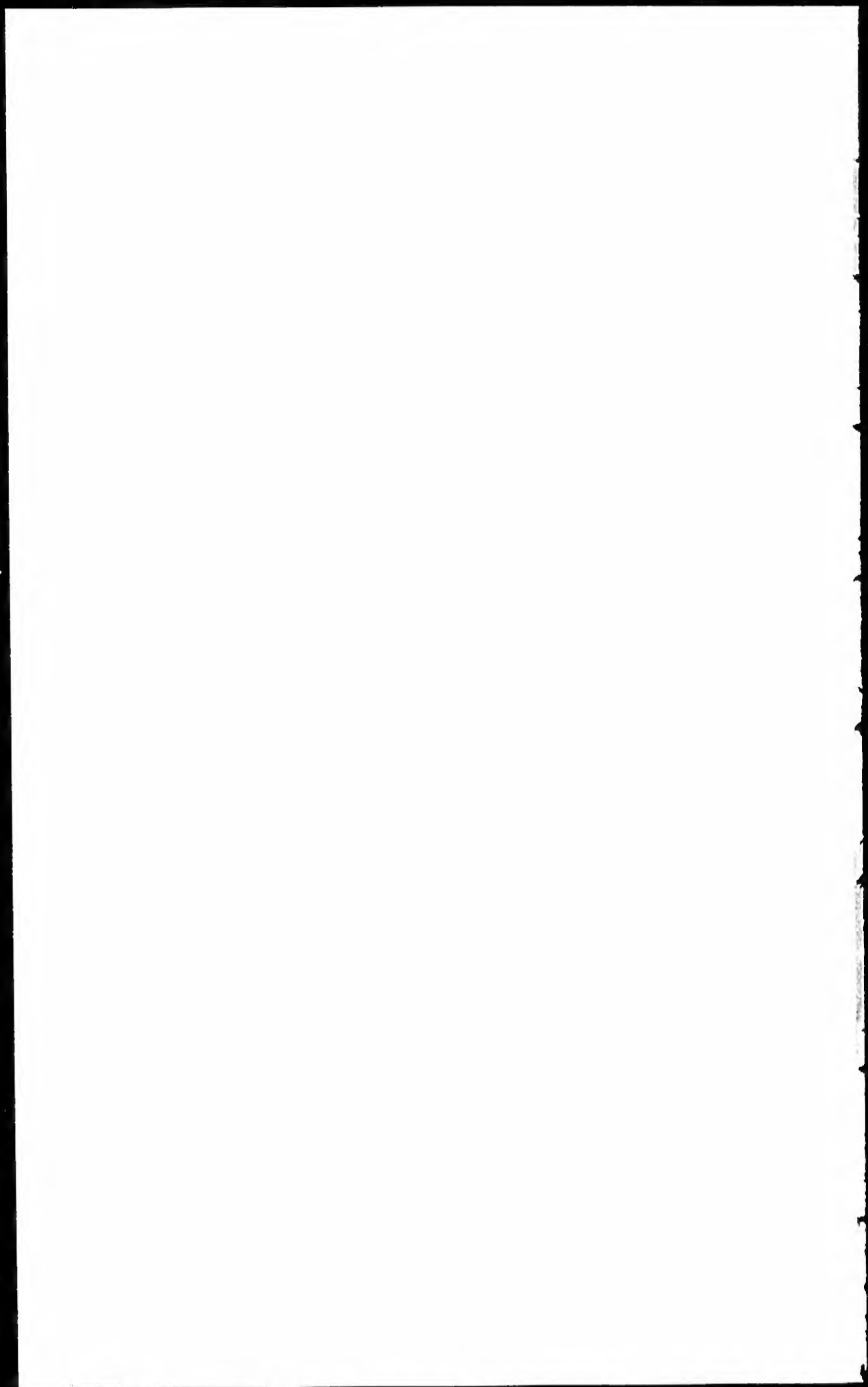
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APPEAL FROM ORDERS OF THE UNITED STATES DISTRICT COURT
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JOINT APPENDIX

DOCKET ENTRIES

[Misc. No. 41-63]

1963

Nov. 26 Award of National Mediation Board, Arbitration
Board No. 282, dated November 26, 1963 filed.

* * * * *

1964

Feb. 28 Order that judgment entered on the arbitration
award heretofore filed is final upon the parties.
* * * Holtzoff, J.

* * * * *

May 11 Order permanently enjoining the Brotherhood of
Locomotive Firemen and Enginemen from strik-
ing over any dispute as to the meaning or applica-
tion of the Arbitration Award; denying Counter-
motion for Injunctive Relief; reserving jurisdic-
tion for any further action. * * * Holtzoff, J.

* * * * *

1965

Feb. 11 Motion of Brotherhood of Locomotive Firemen and
Enginemen for supplemental relief; affidavit;
points and authorities; * * * filed

* * * * *

Mar. 18 Affidavit of E. S. Lohrke in opposition to motion
for supplemental relief; Exhibits A thru L; * * *
filed

* * * * *

Mar. 31 Stipulation as to issues and facts concerning motion
for supplemental relief; Exhibits A thru L; * * *
[filed.]

* * * * *

May 20 Amendment to motion filed 2/11/65 by Brotherhood of Locomotive Firemen and Enginemen for supplemental relief, P&A, * * * [filed.]

* * * * *

Sept. 13 Order granting in part and denying in part motion by Brotherhood of Locomotive Firemen and Enginemen for supplemental relief against The Southern Pacific Company, J. E. Wolfe and E. H. Hallman. * * * Holtzoff, J.

* * * * *

Dec. 1 Motion of Brotherhood of Locomotive Firemen and Enginemen for supplement relief vs Southern Pacific and other Carriers; Affidavits (2), P&A's; * * * filed

* * * * *

1966

Jan. 7 Points and Authorities of Carriers in opposition to motion for supplemental relief against Southern Pacific Co., and other Carriers, P&A's; * * * filed

* * * * *

Feb. 16 Motion by Brotherhood of Locomotive Firemen and Enginemen for Supplemental Relief vs Southern Pacific Company and other Carriers represented by the Eastern, Western and Southeastern Carriers' Committees, heard in part and continued until March 28, 1966. * * * Holtzoff, J.

* * * * *

Mar. 28 Motion of Brotherhood of Locomotive Firemen and
Enginemen for Supplemental Relief based upon
Public Law 88-108 and judgment on Arbitration
Board v. Southern Pacific Company and other
Carriers represented by the Eastern, Western and
Southeastern Carriers' Conference (Heard in part
on Feb. 16, 1966), argued and granted in part.
(Order to be presented.) * * * Holtzoff, J.

* * * * *

Apr. 6 Order granting motion of Brotherhood of Locomo-
tive Firemen & Enginemen for supplemental
relief against Southern Pacific Company & other
Carriers. * * * Holtzoff, J.

* * * * *

Apr. 18 Motion of Carriers to amend order granting motion
of BLF & E for supplemental relief against
Southern Pacific and other carriers dated 4/6/66;
P&A; * * * filed

* * * * *

June 2 Order denying motion of Carriers to amend Order
of April 6, 1966, granting motion of Brotherhood
of Locomotive Firemen & Enginemen for supple-
mental relief vs. Southern Pacific & other carriers.
* * * Holtzoff, J.

* * * * *

June 28 Notice of appeal of Southern Pacific Company and
other Carriers from order entered 6/2/66 * * *
filed

AWARD OF ARBITRATION BOARD No. 282

[Filed November 26, 1963]

This Award is made pursuant to Public Law 88-108, 88th Congress, S.J. Res. 102, enacted August 28, 1963.

* * * * *

The Board has incorporated in this Award any matters on which it found the parties were in agreement, has resolved the matters on which the parties were not in agreement, and has given due consideration to those matters on which the parties were in tentative agreement. Further, the Board has given due consideration to the effect of the Award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees affected, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

After a full consideration of the evidence and arguments and upon the entire record, the Board makes a complete and final disposition of the issues submitted and finds and awards as follows.

I. DISPOSITION OF SECTION 6 NOTICES

Those portions of the carriers' notices of November 2, 1959, identified as "Use of Firemen (Helpers) on Other Than Steam Power" and "Consist of Road and Yard Crews" and that portion of the organizations' notices of September 7, 1960, identified as "Minimum Safe Crew Consist" and implementing proposals pertaining thereto are denied, except to the extent hereinafter provided.

II. USE OF FIREMEN (HELPERS) ON OTHER THAN STEAM POWER

PART A—SAVING CLAUSE

A(1). All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award.

PART B—REDUCTIONS IN JOBS

B(1). Within 7 days following the effective date of this Award, each carrier covered by this Award shall have the right to give to each local chairman of the organization representing firemen (helpers) in each fireman (helper) seniority district a list of pool and regularly assigned freight engine crews (including pool and regularly assigned crews used in mixed, miscellaneous, and unclassified services) and a list of regularly assigned yard engine crews (including regularly assigned crews used in transfer, belt line, and miscellaneous yard services) then employed by the carrier in each such seniority district. The two lists shall include those engine crews which, in the carrier's judgment, based upon considerations of safety, undue work burden, and adequate and safe transportation service to the public, do not require the services of a firemen (helper).

B(2). Each local chairman, within 30 days of receipt of the carrier's lists, shall have the right, based upon considerations of safety, undue work burden, and adequate and safe transportation service to the public, to designate the engine crews in which the carrier shall be required to continue to use firemen (helpers); provided, that such designated crews shall not be more than 10 per cent of the freight engine crews, nor more than 10 per cent of the yard engine crews, in any seniority district, as such crews are listed by the carrier. Each local chairman's designation of crews to be operated with firemen (helpers), made as provided herein, shall be final and binding upon the parties in interest and shall not be subject to challenge or review; but prior conference shall be had between the parties in interest with respect to the crews to be so designated by the local chairman. The time and place for the beginning of such conferences shall be agreed upon within 10 days after the receipt of the carrier's lists by the local chairman, and said time shall be within 20 days after the receipt of the said lists.

B(3). At 3-month intervals following the date of the carrier's original lists, the carrier shall give to each local chairman lists of pool and regularly assigned freight engine crews and of regularly assigned yard engine crews which

have been established or discontinued in each seniority district during the preceding 3 months and which meet the criteria set forth in paragraph B(1) of this Award; and the number of crews designated by the local chairman in which the carrier shall be required to use firemen (helpers) shall thereafter be adjusted, in the manner provided in paragraph B(2) of this Award; provided that not more than 10 per cent of the pool and regularly assigned freight engine crews nor more than 10 per cent of the regularly assigned yard engine crews, then employed by the carrier in any seniority district and included in either list, shall be designated as crews in which firemen (helpers) must be used.

B(4). Copies of all lists herein required to be furnished by the carrier to the local chairman shall be furnished to the general chairman of the organization involved.

B(5). After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to use firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services), other than in crews designated by the local chairman, pursuant to the provisions of paragraphs B(2) and B(3) of this Award, except as may be necessary to provide jobs for firemen (helpers) whose employment rights are retained as provided in Parts C and D of this Award; provided that no yard locomotive shall be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition.

PART C—REDUCTIONS IN EMPLOYMENT

C(1). After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to hire firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services) unless or until such new hire is needed to

man engine crews designated by a local chairman as provided in paragraphs B(2) and B(3) of this Award; and firemen (helpers) that are unneeded to man such designated crews may be separated from the carrier's payrolls and have all of their seniority and employment rights and relations terminated to the extent permitted in the following paragraphs of Part C of this Award.

C(2). Firemen (helpers) hired on or after a date 2 years prior to the effective date of this Award may be separated from the carrier's payrolls and have all of their employment and seniority rights and relations terminated, and in such case shall be entitled to a lump sum separation allowance in an amount to be determined as provided in Section 9 of the Washington Job Protection Agreement of May 21, 1936.

C(3). Firemen (helpers) hired prior to a date 2 years prior to the effective date of this Award whose average monthly earnings as firemen (helpers), hostler helpers, hostlers or engineers have not exceeded \$200 during the full calendar months preceding the effective date of this Award, may be separated from the carrier's payrolls and have all of their employment and seniority rights and relations terminated with a severance allowance equal to 100 per cent of their earnings during the preceding 24 calendar months; or may elect to remain on the seniority lists of the carrier with rights to such work as they are qualified to perform, and which may be or become available to them, as provided in Part D of this Award.

C(4). Firemen (helpers) hired prior to a date 2 years prior to the effective date of this Award, who have not performed service as an engineer or as a fireman (helper) since that date, may be separated from the carrier's payrolls as firemen (helpers) and have all of their employment and seniority rights and relations as firemen (helpers) terminated with no severance allowance.

C(5). The provisions of paragraphs C(3) and C(4) of this Award shall not apply to officers or employees of the organizations representing firemen or engineers employed by the carrier, or to supervisory or management officials of the carrier, or to employees on appropriate leaves of

absence, or to discharged employees whose cases for reinstatement are pending, providing, if not so situated, they could have met the minimum requirements of service or earnings.

C(6). All other firemen (helpers) with less than 10 years' seniority on the effective date of this Award shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective, except as modified by and subject to the provisions of Part D of this Award, unless and until offered by the carrier another comparable job (such as, but not limited to, engineer, fireman (helper), brakeman, or clerk in the same or another seniority district) for which they are, or can become, qualified. The offer of another job shall carry with it relocation expenses as provided for and under the conditions set forth in Section 10 of the Washington Job Protection Agreement of May 21, 1936, the continuation of accumulated seniority rights toward such purposes as vacation and other applicable fringe benefits, and guaranteed annual earnings, for a period not exceeding 5 years, equal to the total compensation received by each such employee as fireman (helper), hostler helper, hostler, or engineer during the last 12 months in which compensation was received prior to the date of transfer. Such offers of jobs shall be posted and made available to all qualified firemen (helpers) in order of seniority in the seniority district in which the job offered is located. If, within 7 days after notice is posted, no senior man elects to take such offered job, the most junior man then on the fireman (helper) roster in that seniority district must, within 3 days from receipt of written notice, accept the job or all of his employment and seniority rights and relations shall be terminated and, in that event, he shall be entitled to one-half the severance allowance provided for in paragraph C(3) of this Award. If such junior fireman (helper) shall fail to accept such job and thereby terminates his employment as herein provided, the next most junior fireman (helper) on that same roster must accept the job within 3 days from receipt of written notice or forfeit all of his employment and seniority rights

and relations with the allowance provided for above. In each case of refusal to accept such job offer the next most junior fireman (helper) shall be required to accept, as provided for above, or forfeit his employment and seniority rights and relations with, in each case, the allowance provided for above, until there are no firemen (helpers) with less than 10 years' seniority remaining on the seniority roster for the seniority district in which the job offer is located. Thereafter, the same procedure as is provided above shall be followed in the fireman (helper) seniority district which has its principal extra list for firemen (helpers) closest to the location of the job offered.

C(7). Firemen (helpers) with 10 or more years of seniority as of the effective date of this Award, who are not separated from the carrier's payrolls under the provisions of paragraphs C(3) or C(4) of this Award, shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective, except as modified by and subject to the provisions of Part D of this Award, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of firemen (helpers) by natural attrition.

PART D—RIGHTS TO WORK

D(1). Firemen (helpers) who elect to remain on the seniority lists of the carrier as provided in paragraph C(3) of this Award shall be entitled to exercise their seniority rights as firemen (helpers) to available employment in engine crews used in passenger service and in freight and yard engine crews designated by the local chairmen in their respective seniority districts as provided in paragraphs B(2) and B(3) of this Award, as hostlers or hostler helpers, and as engineers in any class of service for which they are qualified; but such firemen (helpers) shall have no rights to and shall not claim seniority rights to or employment in any other service.

D(2). Firemen (helpers) who remain on the active working lists of the carrier under the provisions of paragraphs C(6) and C(7) of this Award shall have the right to work

their turn as firemen (helpers) to the extent that positions as firemen (helpers) are available in their respective seniority districts on locomotives of the type to which firemen (helpers) were assigned and in a class of service calling for the service of a fireman (helper) prior to the effective date of this Award; provided, that such firemen (helpers) shall have no right to jobs that the carrier may discontinue pursuant to the provisions of this Award if other employment in any class of engine service, for which they are qualified, is available to them in their respective seniority districts. Such firemen (helpers) will have their seniority rights, existing as of the effective date of this Award, for promotion in their turn, preserved.

D(3). Extra lists shall be adjusted and firemen (helpers) shall be furloughed and recalled pursuant to the provisions of rules in effect as of the day before the day this Award becomes effective, as modified by and subject to the provisions of this Award; provided, that the carrier shall not be required to use firemen (helpers) covered by paragraph D(2) of this Award in freight or yard crews, other than in crews designated by the local chairmen pursuant to the provisions of paragraphs B(2) and B(3), if the services of such employees are required on the extra list to fill vacancies in crews or positions where firemen (helpers) must be used, as in passenger service or under the provisions of this Award.

D(4). Firemen (helpers) retained in service under the conditions set forth in Parts C and D of this Award, when assigned to the extra lists for firemen (helpers), shall not be called to fill vacancies in crews in freight and yard service which have not been designated by the local chairmen pursuant to the provisions of paragraphs B(2) and B(3) of this Award if and when their services are required to fill temporary vacancies as locomotive engineers, or temporary vacancies for firemen (helpers) in passenger service, or temporary vacancies for firemen (helpers) in crews designated by the local chairmen as provided in paragraphs B(2) and B(3) of this Award.

PART E—CONTINUING STUDY

E(1). Within 30 days following the effective date of this Award, the parties shall establish a National Joint Board charged with responsibility for making an intensive and continuing study of the experience in road freight and yard service with and without the employment of firemen (helpers) during the period that this Award remains in effect. During the 3-month period before the date this Award is due to expire, the National Joint Board shall prepare and issue to the parties a report based on its study.

E(2). The National Joint Board established in paragraph E(1) shall consist of 4 members, of whom 2 shall be selected by the carriers, and one each by the Brotherhood of Locomotive Firemen and Enginemen, and by the Brotherhood of Locomotive Engineers. The expenses of the Board shall be borne by the participating parties.

* * * * *

JUDGMENT ON ARBITRATION AWARD

[Filed February 28, 1964]

The Award of National Railway Labor Arbitration Board No. 282 having been rendered pursuant to Section 3 of the Joint Resolution of the Congress of August 28, 1963, Public Law 88-108, 88th Cong., having been duly certified and acknowledged under the hands of the arbitrators and having been filed in this Court as provided for by Section 4 of the said Joint Resolution and Section 8 of the Railway Labor Act; and

Petitions to impeach said award having been filed and heard by this Court in Civil Actions No. 2919-63 and No. 2921-63; and

This Court having rendered its decision on January 8, 1964, and having entered judgment on January 10, 1964, dismissing the said actions; and

The United States Court of Appeals for the District of Columbia Circuit having on February 20, 1964, affirmed the aforesaid judgments of this Court:

IT IS ORDERED, ADJUDGED AND DECREED that judgment is hereby entered on the arbitration award heretofore filed herein, which judgment is final and conclusive upon the parties.

ALEXANDER HOLTZOFF,
United States District Judge.

February 28, 1964.

INTERPRETATIONS OF ARBITRATION BOARD No. 282

BLF&E Question No. 61

(Answered October 23, 1964)

It is the contention of the employees that a local freight, roadswitcher, roustabout, patrol, or any road freight assignment which performs yard or industrial switching must employ a helper-fireman if the locomotive used on such assignments is not equipped with a deadman control in good operating condition. Is the contention of the employees correct?

Answer:

No. Under Paragraph B(5) of the Award the applicable reference is to yard locomotives.

BLF&E and Carrier Questions of February 17, 1966

(Answered February 20, 1966)

B.L.F. & E. Questions:

In the light of the foregoing, the views of this Board requested are: (a) is the Board of the view that it has jurisdiction to prescribe or announce the procedures required to be followed to remedy violations or misapplications of its Award; and (b) if the Board believes it has such jurisdiction, what are such procedures? Included in (b) is the question whether the Board intended the provisions of Section 17 of the 1948 agreement to govern claims of violations or misapplications of the Award. The Brotherhood is of the view that such matters are beyond the purview of the Board; that this Board has jurisdiction only to interpret its Award; and the resolution of such questions are not even hinted at in the Award and thus cannot be answered by an interpretation of the Award.

Carrier Questions:

(A) It is the carriers' understanding (1) that the Award by Arbitration Board No. 282 contemplated that the claims and grievances of individual employees based upon alleged violations by a carrier of employment rights that have their origin in the Arbitration Award should be handled under procedures established by or pursuant to Section 3 of the Railway Labor Act (45 U.S.C. § 153), and (2) that the Award did not make agreements by the parties with respect to the handling of claims and grievances (such as Section 17 of the Agreement of August 11, 1948) inapplicable to individual claims and grievances based upon alleged violations of the Award. Is the carriers' understanding correct?

(B) It is the carriers' understanding (1) that the Award by Arbitration Board No. 282 contemplated that the claims and grievances of individual employees based upon an alleged violation by a carrier of firemen's employment rights as they existed on the day preceding the day the Award became effective, and as to which the carrier sought to justify its action on the ground that the Arbitration Award modified or nullified the prior employment rights, should be handled under procedures established by or pursuant to Section 3 of the Railway Labor Act (45 U.S.C. § 153), and (2) that the Award did not make agreements by the parties with respect to the handling of claims and grievances such as Section 17 of the Agreement of August 11, 1948) inapplicable to claims and grievances based upon alleged violations of pre-existing rules where the carrier sought to justify its action on the ground that the Arbitration Award had modified or nullified such rules. Is the carriers' understanding correct?

(C) It is the carriers' understanding (1) that the Award by Arbitration Board No. 282 contemplated that the two groups of individual claims and grievances asserted against the Southern Pacific under the circumstances described above should be handled under procedures established by or pursuant to Section 3 of the Railway Labor

Act (45 U.S.C. § 153), and (2) that the Award did not make agreements between the Southern Pacific and the BLF&E with respect to the handling of claims and grievances (including Section 17 of the Agreement of August 11, 1948 as incorporated into the local agreements between the Southern Pacific and the BLF&E) inapplicable to either of the two groups of claims and grievances asserted against the Southern Pacific under the circumstances described above. Is the carriers' understanding correct?

Answer:

At the time that Award 282 was handed down, the Board did not know and could not know the nature or extent of enforcement problems that might subsequently arise. The Award contains no provision dealing with that subject. It does provide, however, in Section II, Part A(1), that "All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award."

The questions submitted to the reconvened Board have included many which in the Board's opinion involved applications of existing agreements, rules, regulations, interpretations, or practices, rather than interpretations of Award 282. Accordingly, the Board declined to rule on these questions; instead it referred them back to the parties. In order to assist the parties, the Board, in a number of such instances, called their attention to the availability of settlement procedures under their own agreements or under Section 3 of the Railway Labor Act. These references had no mandatory effect; the parties were at all times free to disregard the Board's advice. By the same token, these references did not purport to encompass all the legal remedies that might be available to the parties. Clearly, the Board lacked authority to issue such a conclusive ruling.

The foregoing comments refer to issues submitted to the reconvened Board which did not involve interpretations of Award 282. In respect to those questions which clearly involved the meaning of Award 282, the Board has issued the

necessary interpretations. These rulings, like the Award itself, did not contemplate or require a mandatory or exclusive enforcement procedure. Here again, the Board had no authority and did not purport to describe the precise methods for enforcing claims under the Award or for breach of the Award, as interpreted. In calling the parties' attention to other procedures available for adjudication of these claims, the Board had in mind both the desirability of an early disposition of these disputes and the obvious necessity of resolving complicated issues of fact before the Award, as interpreted, could be applied.

Carriers Question (A)(1): Award 282 and interpretations issued thereunder, did not contemplate that the claims and grievances of individual employees based upon alleged violations by a carrier of employment rights that have their origin in the Award should be handled *exclusively* under procedures established by or pursuant to Section 3 of the Railway Labor Act. It was contemplated, however, that these types of claims could be so handled.

Carriers Question (A)(2): Award 282 and interpretations issued thereunder applied thereunder did not make agreements by the parties with respect to the handling of claims and grievances (such as Section 17 of the Agreement of August 11, 1948) inapplicable to individual claims and grievances based upon alleged violations of the Award. On the other hand, for the reasons set forth above, the Award neither contemplated nor provided that Section 17 or similar provisions in other agreements should be applicable to such claims or grievances, or that they should be the exclusive remedies available.

The foregoing answers are equally applicable to Carriers Questions B(1) and (2) and C(1) and (2).

B.L.F. & E. Question (a): The Board does not take the view that it has jurisdiction to prescribe mandatory or exclusive procedures for remedying violations or misapplications of its Award. Previous references to such remedies in interpretations issued by the reconvened Board have been advisory only.

ORDER

[Filed May 11, 1964]

This matter came on to be heard upon the prayer of the carrier parties herein for injunctive relief in their Motion for Supplementary Relief Based upon Judgment on Arbitration Award, supported by affidavits and attached documents, upon the Response to Order to Show Cause and Countermotion for Injunctive Relief filed by the Brotherhood of Locomotive Firemen and Enginemen et al., supported by affidavit and attached documents, and upon additional affidavits and attached documents submitted by the carrier parties.

The Court upon due consideration of the aforesaid papers, the memoranda of points and authorities submitted by the parties and oral argument on their behalf, having determined that the Brotherhood of Locomotive Firemen and Enginemen through its officers, agents, employees, members and persons acting in concert with them is threatening to engage in strikes or work stoppages against the carriers, or to picket the premises of such carriers, over a dispute or disputes as to the meaning or application of the Arbitration Award upon which judgment heretofore has been entered in this proceeding, unless enjoined by this Court; that such strikes, work stoppages or picketing are illegal under Public Law 88-108 and the judgment heretofore entered in this proceeding upon the Award by Arbitration Board No. 282; that such strikes, work stoppages or picketing will cause irreparable injury to the carriers; that injunctive relief against such strikes, work stoppages and picketing is necessary to prevent such irreparable injury and to protect and preserve the jurisdiction of Arbitration Board No. 282 over the disputes concerning the meaning and interpretation of its Award and of the Court over the rulings made by the Board with respect to such disputes; and, assuming that the Court has jurisdiction to condition such injunctive relief upon the carriers refraining from the implementation of disputed applications of the Award pending determination of those disputes by the Board or to enjoin the carriers from so acting, that the circumstances do

not justify the imposition of such a condition or the granting of such an injunction;

IT IS HEREBY ORDERED:

1. That the Brotherhood of Locomotive Firemen and Enginemen, its officers, agents, employees, members and all persons acting in concert with them, be and they hereby are permanently enjoined from authorizing, calling, encouraging, permitting, or engaging in any strikes or work stoppages, and from picketing the premises of the carriers, over any dispute as to the meaning or application of the Arbitration Award on which judgment heretofore has been entered in this proceeding;

2. That the Countermotion for Injunctive Relief is in all respects denied; and

3. That this Court reserves jurisdiction for the purpose of enabling any of the parties to this proceeding, or any person that may be or may hereafter become bound in whole or in part by this order, to apply to this Court at any time for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this order or of the judgment heretofore entered in this proceeding upon the Award by Arbitration Board No. 282, or any legal obligation resulting therefrom.

ALEXANDER HOLTZOFF,
United States District Judge.

Dated: May 11, 1964.

MOTION BY BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN FOR SUPPLEMENTAL RELIEF BASED UPON PUBLIC LAW 88-108 AND JUDGMENT ON ARBITRATION AWARD, AGAINST SOUTHERN PACIFIC COMPANY, J. E. WOLFE, CHAIRMAN OF NATIONAL RAILWAY LABOR CONFERENCE, AND E. H. HALLMAN, CHAIRMAN OF WESTERN CARRIERS' CONFERENCE COMMITTEE

[Filed February 11, 1965]

Comes now Brotherhood of Locomotive Firemen and Enginemen and moves the Court for an order requiring Southern Pacific Company (hereinafter referred to as "Southern Pacific") and J. E. Wolfe as Chairman of the Carriers' National Railway Labor Conference, and E. H. Hallman as Chairman of the Western Carriers' Conference Committee, to comply with the Award rendered by Arbitration Board No. 282, and with Public Law 88-108, by ceasing to violate the employment rights of Southern Pacific firemen (helpers) employees under the pretext that such violations are authorized by the Arbitration Award—

(1) By requiring or permitting firemen (helpers) classified as C(7) firemen pursuant to Part C of said Award and whose names appear on the firemen's extra lists to work as firemen on blanked freight train assignments and blanked yard switching assignments when such firemen are available for work on such assignments and will lose one or more days' wages if they are not called to work on such assignments;

(2) By restoring to employment those employees classified as C(6) firemen who were discharged from their employment in a manner contrary to and disregarding of the procedure and conditions prescribed by Part C(6) of the Award;

(3) By restoring those senior C(7) firemen who have been arbitrarily removed from pool freight lists during the period from June 1, 1964, to the present date as a result of Southern Pacific's intentional and deliberate misapplication of the mileage regulation rules contained in the firemen's agreements in effect

on the day preceding the day that the Award became effective;

(4) By ceasing the practice of refusing to bulletin vacant and newly established firemen's assignments on the six seniority districts comprising Southern Pacific's lines in the States of Texas and Louisiana, which assignments should have been bulletined according to the rules and practices that were in effect on the day preceding the effective date of the Arbitration Award, and to reimburse those C(7) firemen whom the Southern Pacific has prevented from bidding for and obtaining firemen's assignments on the basis of their seniority, as is contemplated by the terms and the intent of the Arbitration Award and the interpretation of the Award as made by Arbitration Board No. 282;

(5) By ceasing to use road freight locomotives to perform yard switching service when the locomotive is not equipped with a deadman control, and by ceasing to use yard switching locomotives that are equipped with deadman controls but which are not in good operating condition, and a fireman is not assigned to work as a member of the crew performing the switching service;

(6) By ceasing to require or to permit ground members of yard switching crews to ride in the cabs of switching locomotives for the purpose of performing the duties formerly performed by firemen, after the fireman has been removed by the carrier from yard switching assignments pursuant to Part B(1) and Part B(5) of the Arbitration Award;

(7) By ceasing to operate a locomotive known as "Orange Switcher No. 2" as a local freight and switching locomotive without a fireman being a member of the crew, when the assignment upon which the locomotive is used has not been listed as a blankable assignment, and has not become a blanked assignment, pursuant to Part B of the Arbitration Award;

(8) By calling from freight pool service, for the purpose of filling firemen's emergency assignments when the firemen's extra list is exhausted, the fireman

on the freight pool list who is rested and stands in first position to be called to work, as required by the rules and established practices that were in effect on the day preceding the effective date of the Award, thereby complying with Part C(7) and Part D of the Arbitration Award;

(9) By refraining from requiring firemen assigned to yard switching jobs to work more than five days per week in a seven day week, unless such firemen are paid at one and one-half times the basic straight-time rate for work performed in excess of five days per week, as required by the rules and practices in effect on the day preceding the effective date of the Award and in keeping with the requirements of the Arbitration Award;

(10) By compensating those C(6) and C(7) firemen who have suffered loss of earnings as a result of Southern Pacific's violations of the Arbitration Award, or as a result of Southern Pacific's actions in preventing C(7) firemen from protecting engine service assignments on the basis of their seniority and in the manner provided by the rules and practices that were in effect on the day preceding the day that the Arbitration Award became effective on the pretext that such actions were and are authorized by the Arbitration Award.

As grounds for said Motion, the Brotherhood shows (as more fully set forth in the affidavit accompanying this Motion) as follows:

(A) That Southern Pacific has, on the six seniority districts comprising its lines in the States of Texas and Louisiana, caused C(7) firemen working off the firemen's extra lists to be idle and to suffer loss of wages by failing to call or permit them to work on blanked assignments in road freight service and yard switching service when they were not occupied in performing services as firemen (helpers) in passenger service or hostling service, or on vetoed assignments in freight service or yard service;

(B) That between May 25 and June 15, 1964, Southern Pacific discharged 91 firemen who were classified as C(6) firemen for the purposes of the Arbitration Award, under circumstances and conditions that clearly disregarded the requirements of Part C(6) of the Arbitration Award;

(C) That from June to December, 1964, Southern Pacific, by an intentional and deliberate misapplication of the firemen's mileage rules, arbitrarily removed a majority of all senior C(7) firemen from the 17 freight pool lists to which they had been assigned under the rules and practices that were in effect on the day preceding the effective date of the Arbitration Award and compelled such firemen to take jobs on yard switching locomotives at approximately 25 percent lower pay and under more onerous working conditions and circumstances;

(D) That Southern Pacific has, since June 25, 1964, arbitrarily ceased and refused to comply with the long-established rules and practices in effect on that railroad under which all vacant and newly established firemen's assignments in freight service and in yard switching service are bulletined and are awarded to the fireman having the most seniority among those bidding on the job, with the result that senior C(7) firemen have been prevented from selecting and/or holding jobs on the basis of their seniority and have been confined to low-paying and undesirable jobs, while firemen junior to them have been placed by Southern Pacific in higher paying, and otherwise preferred, freight pool assignments, with the explanation and on the pretext that the Arbitration Award authorizes Southern Pacific to thus interfere with the assignments held by senior C(7) firemen and with the exercise of their rights based upon seniority;

(E) That Southern Pacific has been and is using road locomotives to perform yard switching services while not equipped with a deadman control, and is using yard locomotives to perform yard switching service when the deadman control is not in operating condition, with-

out a fireman (helper) being a member of the crew operating such locomotives, contrary to Part B(5) of the Arbitration Award;

(F) That Southern Pacific has blanked numerous yard switching assignments pursuant to Part B of the Arbitration Award and has removed the fireman (helper) from such assignments as a member of the crew, but thereafter Southern Pacific has required or permitted members of the ground switching crews to occupy the place in the cab of the locomotive formerly occupied by the fireman for the purpose of performing the duties formerly performed by the fireman, to wit, transmitting signals from the ground crew to the engineer and maintaining a lookout for other switching locomotives and moving trains, and for ground personnel, so as to avoid collisions or causing injuries to the ground personnel, contrary to the terms and the intent of the Arbitration Award and the interpretations thereof as made by Arbitration Board No. 282;

(G) That Southern Pacific has been and is operating a locomotive known as "Orange Switcher No. 2," in combination service consisting of local freight and switcher service, without a fireman (helper) being a member of the crew and without said assignment being listed as a blankable, or a blanked, assignment pursuant to Part B of the Arbitration Award;

(H) That Southern Pacific, contending that the Arbitration Award has nullified the employment rules and practices applicable to its C(7) firemen, as such rules and practices existed on the day preceding the effective date of the Arbitration Award, declines and refuses to conform to the rules contained in the firemen's agreements controlling the calling of firemen regularly assigned to freight pool lists for the purpose of filling emergency assignments in other classes of service when the firemen's extra list is exhausted;

(I) That Southern Pacific, contending that the Arbitration Award has nullified the employment rules and practices of its C(7) firemen, as such rules and practices existed on the day preceding the effective date of the

Arbitration Award, declines and refuses to comply with a National Agreement dated May 23, 1952, and later amended October 14, 1955, between the Brotherhood and Southern Pacific and other carriers, under the terms of which firemen regularly assigned to yard switching service are to work a 5-day work week, and are to be paid at one and one-half times the daily rate if they are required to work more than five days in the course of seven consecutive days;

(J) That in the course of conferences, discussions and disputes by and between Southern Pacific and the Brotherhood's general chairman and local chairmen regarding the above several violations of the Arbitration Award and the Award's alleged nullification of the rules and established practices governing the employment of firemen as of the day preceding the effective date of the Arbitration Award, Southern Pacific has consistently asserted and maintained that it was and is guided, directed and counseled regarding the purpose, interpretation and effect of the Arbitration Award by J. E. Wolfe acting as Chairman of the Carriers' National Railway Labor Conference, and by E. H. Hallman acting as Chairman of the Western Carrier's Conference Committee.

This motion is made pursuant to the order of the Court entered on May 11, 1964, in which the Court enjoined the Brotherhood and the employees it represents from authorizing, permitting, or engaging in any strike over any dispute as to the meaning or the application of the Award rendered by Arbitration Board No. 282; and in which this court reserved jurisdiction for the purpose of enabling any of the parties to that proceeding to apply to this Court at any time for such further orders as may be appropriate for the carrying out or enforcement of the judgment entered in the proceeding based upon said Award.

Wherefore, the Brotherhood moves the Court to enter an order requiring the Southern Pacific Company, J. E. Wolfe as chairman of the carriers' National Railway Labor Conference, and E. H. Hallman as Chairman of the Western

Carriers' Conference Committee to cease violating the Award rendered by Arbitration Board No. 282 and cease violating Public Law 88-108, as aforesaid, and that Southern Pacific Company be ordered to pay both compensatory and punitive damages to those C(6) firemen and C(7) firemen who have suffered loss of earnings by being denied employment rights to which they were entitled by the terms of the Arbitration Award and by the rules and established practices governing the employment of firemen that were in effect on the day preceding the effective date of the Arbitration Award.

Respectfully submitted.

MILTON KRAMER,

SCHOENE AND KRAMER
1625 K Street, N.W.,
Washington, D.C. 20006.

HAROLD C. HEISS.

HEISS, DAY AND BENNETT,
622 Keith Building,
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AFFIDAVIT IN SUPPORT OF MOTION BY BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN FOR SUPPLEMENTAL RELIEF BASED UPON PUBLIC LAW 88-108 AND JUDGMENT ON ARBITRATION AWARD, AGAINST SOUTHERN PACIFIC COMPANY, J. E. WOLFE, CHAIRMAN OF NATIONAL RAILWAY LABOR CONFERENCE, AND E. H. HALLMAN, CHAIRMAN OF WESTERN CARRIERS' CONFERENCE COMMITTEE.

[Filed February 11, 1965]

[1] Allen C. Byron, being first duly sworn, on oath deposes and says:

(A) That he is the Brotherhood of Locomotive Firemen and Enginemen's General Chairman on the Texas and Louisiana lines of the Southern Pacific Railroad (hereinafter sometimes referred to as "Southern Pacific"), and has held that position since October 3, 1953; that he began his employment as a locomotive fireman on the Southern Pacific on December 6, 1922, and was promoted to locomotive engineer on August 9, 1942; and that from November 21, 1959, to June 8, 1964, he was chairman of the Brotherhood's National Rules Committee, which Committee was charged with conducting negotiations with the Eastern, Western, and Southeastern Carriers' Conference Committees relative to the carriers' November 2, 1959, notice, which notice proposed the elimination of all collective bargaining agreements and practices involving the employment of locomotive firemen (helpers), except in passenger train service, [2] and which led to the enactment by Congress of Public Law 88-108, the establishment of Arbitration Board No. 282 pursuant thereto, and the issuance of a binding Award by the Board, effective January 25, 1964.

(B) That the lines of the Southern Pacific Railroad located within the States of Texas and Louisiana are divided into, or comprise, six seniority districts, which districts are generally referred to or known by the following names:

Houston & Texas Central Seniority District
El Paso—Del Rio Seniority District
Houston, East & West Texas Seniority District
Houston—LaFayette Seniority District

Houston—Victoria—Del Rio Seniority District
Morgan, Louisiana & Texas Seniority District

(C) This affiant asserts, upon information and belief, that in the course of operating that portion of its railroad located within the States of Texas and Louisiana, Southern Pacific has been and is violating the Award and interpretations relating thereto rendered by Arbitration Board No. 282, in the manner and on the occasions as hereinafter set forth.

PART I

Southern Pacific Refuses to Call C(7) Firemen from the Extra Boards to Operate Blanked Assignments When Such Firemen Are Available for Work and Are Caused to Lose One or More Day's Work by the Carrier's Refusal to Call Them to Perform Service.

(1) All Firemen who were employed on Southern Pacific's [3] and Louisiana lines prior to January 25, 1964, and were classified as C(2) firemen pursuant to Part C(2) of the Arbitration Award, were separated from the carrier's payroll and their employment terminated on May 13, 1964. There were 41 such firemen. Similarly, all firemen employed on Southern Pacific's Texas and Louisiana lines on January 25, 1964, and classified as C(6) firemen under the terms of the Award, were separated from the carrier's payroll and their employment terminated as of May 29, 1964. There were 91 such firemen of which 85 were actually working. Since May 29, 1964, the only firemen that have been employed on the Texas and Louisiana lines of the Southern Pacific are firemen classified as C(7) firemen, they being firemen having 10 or more years of seniority prior to the effective date of the Award.

(2) On the Southern Pacific Railroad one or more firemen's extra lists are maintained on each seniority district. Firemen whose names appear on the extra lists are customarily called to perform service in regular order or turn, and they are used to fill vacancies in passenger service, freight service, helper service and yard service when regularly assigned firemen are not available for work, or when

extra yard switching locomotives or extra freight trains are operated by the carrier.

(3) Part C(7) of the Award rendered by Arbitration Board No. 282 provides as follows:

"Firemen (helpers) with 10 or more years of seniority as of the effective date of this Award, who are not separated from the carrier's payrolls under the provisions of paragraphs C(3) or C(4) of this Award, shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective, [4] except as modified by and subject to the provisions of Part D of this Award, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of firemen (helpers) by natural attrition."

(4) Part D(2) of the Award provides as follows:

"Firemen (helpers) who remain on the active working lists of the carrier under the provisions of paragraphs C(6) and C(7) of this Award shall have the right to work their turn as firemen (helpers) to the extent that positions as firemen (helpers) are available in their respective seniority districts on locomotives of the type to which firemen (helpers) were assigned and in a class of service calling for the service of a fireman (helper) prior to the effective date of this award; provided, that such firemen (helpers) shall have no right to jobs that the carrier may discontinue pursuant to the provisions of this Award if other employment in any class of engine service, for which they are qualified, is available to them in their respective seniority districts. Such firemen (helpers) will have their seniority rights, existing as of the effective date of this Award, for promotion in their turn, preserved."

(5) Part D(3) of the Award provides as follows:

"Extra lists shall be adjusted and firemen (helpers) shall be furloughed and recalled pursuant to the pro-

visions of rules in effect as of the day before the day this Award becomes effective, as modified by and subject to the provisions of this Award; provided, that the carrier shall not be required to use firemen (helpers) covered by Paragraph D(2) of this Award in freight or yard crews, other than in crews designated by the local chairmen pursuant to the provisions of paragraphs B(2) and B(3), if the services of such employees are required on the extra list to fill vacancies in crews or positions where firemen (helpers) must be used, as in passenger service or under the provisions of this Award."

(6) Notwithstanding the requirements of Part C(7), Part D(2) and Part D(3) of the Award, which are to the effect that firemen classified as C(7) firemen shall have the right to work their turns as firemen (helpers) to the extent that positions as firemen are available in their respective seniority districts on [5] locomotives of the type to which firemen were assigned and in a class of service calling for the service of a fireman prior to the effective date of the Award (after all jobs vetoed by the local chairman pursuant to Part B(2) of the Award have been filled), Southern Pacific has persistently neglected, failed, and refused to call C(7) firemen from the extra lists to work as firemen (helpers) on yard switching locomotives and on freight locomotives when such locomotives are being operated without a fireman being a member of the crew and firemen on the extra lists are ready and available to work, thereby causing such firemen to lose one or more day's work.

(7) The firemen who have thus been deprived of work which they were and are entitled to perform, the days of work they have lost, and the number of switching locomotives or freight locomotives operated without a fireman being a member of the crew on the days or dates that firemen on the extra lists were not called to service but should have been called by the carrier, are set forth below according to the seniority district on which they are employed and the extra list on which their names appeared.

Houston and Texas Central Seniority District Firemens Extra List at Ennis Texas

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
D. R. Ballew	May 12, 1964	3:59 pm yard assignment at Ennis— Engr. Johns
V. R. Blakley	August 23, 1964	Train 257 Ennis to Denison—Engr. Parker Train Denison to Ennis 8-24—Engr. Parker
[6]		
V. R. Blakley	August 29, 1964	100 miles dead head Ennis to Dallas (Miller) 1 yard day-yard job #202—3 pm to 11 pm—Dallas (Miller yard) 100 miles dead head Dallas (Miller) to Ennis to home terminal extra board
V. R. Blakley	September 6, 1964	Train 1/258 Ennis to Hearne—Engr. Collins—Train 339 Hearne to Ennis Sept. 7, 1964—Engr. Collins
V. R. Blakley	September 13, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day job #202— 3 pm to 11 pm—100 miles dead head Dallas (Miller) to Ennis
V. R. Blakley	September 20, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day job #202— 3 pm to 11 pm—100 miles dead head Dallas (Miller) to Ennis
V. R. Blakley	September 28, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day job #101— 6:30 am to 2:30 pm—100 miles dead head Dallas (Miller) to Ennis
V. R. Blakley	October 4, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day job #300— 10:30 pm to 6:30 am—100 miles dead head Dallas (Miller) to Ennis 10-5-64

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
V. R. Blakley	October 26, 1964	Extra East pool frt. assignment # 2— Ennis to Hearne with Engineer Harrison (Returned) Train 345 Hearne to Ennis Oct. 27, 1964 with Engr. Harrison
V.R. Blakley	October 31, 1964	Extra West-Ennis to Ft. Worth pool frt. assignment # 10—Engr. R. R. Pruitt Return trip—Ft. Worth to Ennis (same)
V. R. Blakley	November 7, 1964	100 miles dead head Ennis to Fort Worth—1 yard day—7 am to 3 pm— yard assignment, Ft. Worth 100 miles dead head Ft. Worth to Ennis
V. R. Blakley	November 9, 1964	100 miles dead head Ennis to Fort Worth—1 yard day—3 pm to 11 pm —yard assignment 100 miles dead head Fort Worth to Ennis
[7]		
V. R. Blakley	November 10, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day—6:30 am to 2:30 pm yard assignment 100 miles dead head Dallas (Miller) to Ennis
V. R. Blakley	November 23, 1964	Extra West—Ennis to Ft. Worth and return to Ennis—pool frt. assign- ment # 4 with Engr. Schwalbe
V. R. Blakley	November 24, 1964	112 miles dead head Ennis to Hearne 1 yard day—3 m to 11 pm yard assignment, Hearne yard 112 miles dead head Hearne to Ennis
V. R. Blakley	November 27, 1964	Train # 259—Ennis to Denison with Engr. Kudrna—Extra 7564—Deni- son to Ennis—Nov. 28. Engr. Kudrna (return trip)
A. M. Blount	October 26, 1964	1 yard day—3:59 pm to 11:59 pm yard assignment with Engr. Johns

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
A. M. Blount	October 28, 1964	Pool frt. turn # 11—Ennis to Hearne Engr. Lewis—Extra 7531—Hearne to Ennis—Engr. Lewis, Oct. 29, 1964
A. M. Blount	November 3, 1964	100 miles dead head Ennis to Fort Worth—1 yard day—7 am to 3 pm yard assignment—Fort Worth 100 miles dead head Ft. Worth to Ennis
A. M. Blount	November 6, 1964	100 miles dead head Ennis to Sher- man 1 yard day—3 pm to 11 pm yard assignment—Sherman—100 miles dead head Sherman to Ennis
A. M. Blount	November 7, 1964	112 miles dead head Ennis to Hearne 1 yard day—7 am to 3 pm yard assignment Hearne 112 miles dead head Hearne to Ennis
A. M. Blount	November 9, 1964	100 miles dead head Ennis to Dallas (Miller yd) 1 yard day—7:59 am to 3:59 pm yard assignment Miller yard (Dallas) 100 miles dead head Dallas (Miller) to Ennis
[8]		
A. M. Blount	November 10, 1964	100 miles dead head Ennis to Ft. Worth—1 yard day 7 am to 3 pm yard assignment Forth Worth 100 miles dead head Ft. Worth to Ennis
A. M. Blount	November 21, 1964	1 yard day 7:59 am to 3:59 pm yard assignment—Ennis yard with Engr. Percival
A. M. Blount	November 23, 1964	Extra 5798—Ennis to Hearne—Engr. R. L. Price—Extra 5653—Hearne to Ennis—Engr. R. L. Price, Nov. 24, 1964

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
A. M. Blount	November 29, 1964	Train #259—Ennis to Denison—Engr. Parker. Extra 7564—Denison to Ennis—Engr. Parker. Nov. 30, 1964
R. R. Costlow	July 5, 1964	1 yard day 3:59 pm to 11:59 pm—yard assignment. Ennis with Engr. Johns
R. R. Costlow	July 18, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day, 10:30 pm to 6:30 am yard assignment #300 Miller yard (Dallas) 100 miles dead head Dallas (Miller) to Ennis—July 10, 1964
R. R. Costlow	July 24, 1964	Train 2/258—Ennis to Hearne with Engr. E. W. Harrison Train 339—Hearne to Ennis with Engr. E. W. Harrison
R. R. Costlow	August 14, 1964	Pool frt. turn #17 Ennis to Fort Worth and return to Ennis with Engr. J. T. Harrison
D. C. Colston	August 11, 1964	Train 342 Ennis to Hearne—Engr. E. E. Whitacre Train 337 Hearne to Ennis—Engr. E. E. Whitacre (return trip Aug. 11, 1964)
D. C. Colston	August 12, 1964	Train #46 Ennis to Hearne—Engr. Smith—Train #1/337 Hearne to Ennis Engr. Smith (return trip Aug. 13, 1964)
D. C. Colston	August 17, 1964	Pool freight turn #12—run as extra 5737—Ennis to Fort Worth and return to Ennis with Engr. Percival
D. C. Colston	August 20, 1964	Train 342 Ennis to Hearne with Engr. Gregory—Train 337 Hearne to Ennis with Engr. Gregory (return trip Aug. 21, 1964)

Name of Fireman [9]	Date Lost	Yard and/or Road Jobs Operated Without Fireman
D. C. Colston	September 10, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—2:30 pm to 10:30 pm yard assignment Miller yard # 201 100 miles dead head Dallas (Miller) to Ennis
D. C. Colston	September 13, 1964	Train # 46 Ennis to Hearne—Engr. Huff Train 1/337—Hearne to Ennis—Engr. Huff (return trip to Ennis Sept. 14, 1964)
D. C. Colston	September 21, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day—yard assignment # 202 3:00 pm to 11:00 pm—Miller yard (Dallas) 100 miles dead head Dallas to Ennis
D. C. Colston	October 15, 1964	100 miles dead head Ennis to Dallas (Miller yd.)—1 yard day—yard assignment # 202—2:30 pm to 10:30 pm 100 miles dead head Dallas to Ennis
A. R. Goodman	July 26, 1964	Train # 42 Ennis to Hearne with Engr. Gregory. Train # 339 Hearne to Ennis with Engr. Gregory (round trip all on same date July 26, 1964)
A. R. Goodman	August 19, 1964	Pool frt. turn run extra 947 assignment # 5—Ennis to Dallas (Miller) and return with Engr. Kudrna
A. R. Goodman	August 21, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day—yard assignment # 300—10:30 pm to 6:30 am. 100 miles dead head Dallas (Miller) to Ennis Aug. 22, 1964

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
A. R. Goodman	August 24, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day—yard assignment # 201—2:30 pm to 10:30 pm—Miller yd. 100 miles dead head Dallas (Miller) to Ennis
A. R. Goodman	August 29, 1964	Train # 342 Ennis to Hearne—Engr. H. B. Baskin—Train # 2/337 Hearne to Ennis Engr. H. B. Baskin (return trip to Ennis Aug. 30, 1964)
A. R. Goodman	September 10, 1964	Pool frt. extra # 5505—Ennis to Dallas (Miller) and return—Engr. Kudrna
[10]		
A. R. Goodman	September 11, 1964	Train # 46 Ennis to Hearne—Engr. H. L. Gibbs—Train 1/337 Hearne to Ennis—Engr. H. L. Gibbs (return trip Hearne to Ennis Sept. 12, 1964)
A. R. Goodman	September 13, 1964	Pool frt. extra 551 Ennis to Dallas (Miller) & return—Engr. Schwalbe
A. R. Goodman	September 16, 1964	Pool frt. extra West freight assignment # 4—Ennis to Dallas (Miller) and return—Engr. R. R. Pruitt
A. R. Goodman	September 21, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day—yard assignment # 101—6:30 am to 2:30 pm 100 miles dead head Dallas (Miller) to Ennis
A. R. Goodman	October 3, 1964	Train 1/258—Ennis to Hearne. Engr. Gregory—Train 3/337 Hearne to Ennis, Engr. Gregory (return trip made on Oct. 4, 1964)

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
A. R. Goodman	October 5, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day—yard assignment # 300—10:30 pm to 6:30 am 100 miles dead head Dallas (Miller) to Ennis—Oct. 6, 1964
A. R. Goodman	October 19, 1964	1 yard day—3:59 pm to 11:59 pm—yard assignment—Ennis yard with Engr. Johns
B. V. Lowry	June 29, 1964	Pool frt. extra # 5703 Ennis to Fort Worth and return with Engr. R. R. Pruitt
B. V. Lowry	July 25, 1964	1 yard day—3:59 pm to 11:59 pm yard assignment—Ennis yard Engr. Johns
F. Loughmiller	August 10, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day—yard assignment 2:30 pm to 10:30 pm (Miller yard) 100 miles dead head Dallas (Miller) to Ennis
F. Loughmiller	August 17, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day—yard assignment # 300—10:30 pm to 6:30 am—Miller yard (Dallas) 100 miles dead head Dallas (Miller) to Ennis
F. Loughmiller	August 19, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 201—2:30 pm to 10:30 pm (Miller) 100 miles dead head Dallas (Miller yard) to Ennis
[11]		
F. Loughmiller	August 29, 1964	Pool freight extra 5806—Ennis to Ft. Worth and return with Engr. J. T. Harrison

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
F. Loughmiller	September 5, 1964	Train 342—Ennis to Hearne with Engr. A. E. Mansfield Train 2/337—Hearne to Ennis—Engr. A. E. Mansfield (return trip made Sept. 6, 1964)
F. Loughmiller	September 30, 1964	Train # 342—Ennis to Hearne, Engr. Gibbs Train # 257—Hearne to Ennis, Engr. Gibbs (return trip to Ennis made Oct. 1, 1964)
F. Loughmiller	October 5, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day—yard assignment # 101—6:30 am to 2:30 pm—Miller yard (Dallas) 100 miles dead head Dallas (Miller) to Ennis
F. Loughmiller	October 12, 1964	Pool freight extra 5644 Ennis to Ft. Worth and return with Engr. Kudrna
F. Loughmiller	October 20, 1964	Yard assignment 3:59 pm to 11:59 pm Ennis yard—Engineer Johns
E. W. Mangan	June 30, 1964	100 miles dead head Ennis to Dallas (Miller)—1 yard day—yard assignment # 300—10:30 pm to 6:30 am—Miller yard 100 miles dead head Dallas (Miller) to Ennis—July 1, 1964
E. W. Mangan	July 4, 1964	Yard assignment 3:59 pm to 11:59 pm Ennis Yard—Engr. Johns
H. V. Morton	July 19, 1964	Train # 1/258—Ennis to Hearne—Engr. Smith—Train # 257—Hearne to Ennis—Engr. Smith (return trip made July 20, 1964)
M. V. Morton	July 23, 1964	Yard assignment 3:59 pm to 11:59 pm—Ennis yard—Engineer Johns

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. B. Miller	August 7, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 300—10:30 pm to 6:30 am—Miller yd 100 miles dead head Dallas (Miller yd.) to Ennis August 8, 1964
J. B. Miller	August 18, 1964	Train # 342—Ennis to Hearne, Engr. E. R. Harrison—Train # 337—Hearne to Ennis—Engr. Harrison (return trip to Ennis made on Aug. 19, 1964)
[12]		
J. B. Miller	August 20, 1964	Train # 46 Ennis to Hearne, Engr. Pace Train 3/347 Hearne to Ennis, Engr. Pace (return trip Hearne to Ennis—made Aug. 21, 1964)
J. B. Miller	September 12, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 201—2:30 pm to 10:30 pm Miller yard 100 miles dead head Dallas (Miller yd) to Ennis
J. B. Miller	September 16, 1964	100 miles dead head—Ennis to Dallas (Miller yd.)—1 yard day—yard assignment # 201. Miller yard, 2:30 pm to 10:30 pm 100 miles dead head Dallas (Miller yd) to Ennis
J. B. Miller	September 21, 1964	100 miles dead head Ennis to Dallas (Miller yd.)—1 yard day—yard assignment # 101 Miller yard—6:30 am to 2:30 pm 100 miles dead head Dallas (Miller yd.) to Ennis
J. B. Miller	September 27, 1964	Train # 42 Ennis to Hearne with Engr. Lewis—Train # 1/337 Hearne to Ennis with Engr. Lewis (return trip from Hearne was Sept. 28, 1964)

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. B. Miller	October 3, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 202—Miller Yard—3 pm to 11 pm 100 miles dead head Dallas (Miller yd.) to Ennis
J. B. Miller	October 21, 1964	Train # 46 Ennis to Hearne with Engr. Collins Train # 347—Hearne to Ennis with Engr. Collins (return trip Hearne to Ennis was made Oct. 22, 1964)
J. B. Miller	October 25, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 202, Miller yard, 3 pm to 11 pm 100 miles dead head Dallas (Miller yd.) to Ennis
[13]		
J. B. Miller	October 27, 1964	Pool freight extra # 5722—Ennis to Hearne with Engr. Farr Pool freight extra # 428—Hearne to Ennis (round trip made same date)
J. B. Miller	October 30, 1964	Pool freight extra East—Ennis to Hearne with Engr. Huff—pool turn # 6 Pool freight extra West—Hearne to Ennis, Engr. Huff—pool turn # 6 (round trip made same date)
J. B. Miller	November 2, 1964	100 miles dead head Ennis to Dallas (Miller yd.)—1 yard day—yard assignment # 101 Miller yard—6:30 am to 2:30 pm 100 miles dead head Dallas (Miller yd.) to Ennis
J. B. Miller	November 5, 1964	100 miles dead head Ennis to Sherman 1 yard day—yard assignment Sherman yard—3 pm to 11 pm 100 miles dead head Sherman to Ennis
J. B. Miller	November 7, 1964	1 yard day—7:59 am to 3:59 pm yard assignment—Ennis yard

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. B. Miller	November 8, 1964	Pool freight extra 450—Ennis to Hearne with Engineer Collins Train #259 Hearne to Ennis with Engr. Collins (round trip made same date Nov. 8, 1964)
J. B. Miller	November 9, 1964	100 miles dead head Ennis to Fort Worth—1 yard day—yard assignment—7 am to 3 pm—Ft. Worth yard 100 miles dead head Ft. Worth to Ennis
J. B. Miller	November 30, 1964	Pool freight Extra 370—Ennis to Dallas (Miller yard) and return to Ennis with Engineer Pruitt
F. A. Newton	May 16, 1964	1 yard day—3:59 pm to 11:59 pm yard assignment to Ennis yard with Engr. Johns
W. N. Reed	September 4, 1964	Pool freight extra 5872 Ennis to Ft. Worth and return with Engr. R. R. Pruitt
W. N. Reed	September 9, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment #201—2:30 pm to 10:30 pm Miller yard 100 miles dead head Dallas (Miller yd.) to Ennis
[14]		
W. N. Reed	September 12, 1964	100 miles dead head—Ennis to Dallas (Miller yard)—1 yard day—yard assignment #202—3 pm to 11 pm—Miller yard 100 miles dead head Dallas (Miller yd) to Ennis
W. N. Reed	September 14, 1964	Train #42 Ennis to Hearne with Engr. Templin—Train 1/347—Hearne to Ennis with Engr. Templin (return trip made Sept. 15, 1964)

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
W. N. Reed	October 11, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 300—Miller yard—10:30 pm to 6:30 am 100 miles dead head Dallas (Miller yd) to Ennis on Oct. 12, 1964
W. N. Reed	October 20, 1964	Train # 42—Ennis to Hearne with Engr. Farr—Train 1/347—Hearne to Ennis with Engineer Farr (return trip to Ennis made on Oct. 21, 1964)
W. N. Reed	October 27, 1964	100 miles dead head—Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 101—Miller yard—6:30 am to 2:30 pm 100 miles dead head Dallas (Miller yd) to Ennis
W. N. Reed	November 6, 1964	100 miles dead head Ennis to Fort Worth—1 yard day—yard assignment—7 am to 3 pm—Ft. Worth yard 100 miles dead head Ft. Worth to Ennis
W. N. Reed	November 8, 1964	Pool freight extra 436—Ennis to Hearne—Engr. Gregory Pool freight extra 5812—Hearne to Ennis—Engr. Gregory (round trip made Nov. 8, 1964)
W. N. Reed	November 10, 1964	Pool freight extra Ennis to Hearne—pool turn # 14 with Engr. Templin Pool freight extra 445—Hearne to Ennis, Engr. Templin
W. N. Reed	November 24, 1964	100 miles dead head—Ennis to Dallas (Miller yd.)—1 yard day—yard assignment—2:30 pm to 10:30 pm—Miller yard 100 miles dead head Dallas (Miller yd) to Ennis

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
[15]		
W. N. Reed	November 27, 1964	100 miles dead head Ennis to Fort Worth—1 yard day—yard assignment—3 pm to 11 pm, Ft. Worth yard 100 miles dead head Ft. Worth to Ennis
B. W. Splawn	November 20, 1964	100 miles dead head—Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 201—2:30 pm to 10:30 pm—Miller yard 100 miles dead head Dallas (Miller yd) to Ennis
B. W. Splawn	November 23, 1964	100 miles dead head—Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 201—2:30 pm to 10:30 pm, Miller yard 100 miles dead head Dallas (Miller yard) to Ennis
B. W. Splawn	November 26, 1964	Pool freight extra 351—Ennis to Fort Worth with Engineer Parker (round trip made same date)
E. C. Vaughn	July 9, 1964	Train # 46—Ennis to Hearne with Engr. Sledge—Train 2/347—Hearne to Ennis with Engr. Sledge (return trip—Hearne to Ennis—made July 10, 1964)
E. C. Vaughn	August 3, 1964	Train 1/258—Ennis to Hearne with Engr. Smith—Train 2/337—Hearne to Ennis with Engr. Smith (return trip—Hearne to Ennis made August 4, 1964)
R. J. Ventroa	July 23, 1964	Pool freight extra 7423—Ennis to Fort Worth and return with Engineer Parker
R. J. Ventroa	July 25, 1964	Train # 1/258—Ennis to Hearne with Engr. E. E. Whitacre Train # 339—Hearne to Ennis with Engr. E. E. Whitacre

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. W. Wilhoite	May 15, 1964	1 yard day—yard assignment—3:59 pm to 11:59 pm—Ennis yard with Engr. Johns
J. W. Wilhoite	May 21, 1964	1 yard day—yard assignment—3:59 pm to 11:59 pm—Ennis yard with Engr. Sledge
W. M. Wright	July 18, 1964	100 miles dead head—Ennis to Dallas (Miller yd.)—1 yard day—yard assignment # 303—11 pm to 7 am, Miller yd.—100 miles dead head Dallas (Miller yd.) to Ennis July 19, 1964
[16]		
W. M. Wright	July 24, 1964	Train # 46—Ennis to Hearne with Engr. Farr—Train # 2/347—Hearne to Ennis with Engr. Farr (return trip—Hearne to Ennis made July 25, 1964)
W. M. Wright	July 26, 1964	Pool freight extra # 251—Ennis to Sherman and return to Ennis with Engr. Kudrna
L. H. Whitacre	August 10, 1964	Train # 1/258—Ennis to Hearne with Engr. Farr—Train # 339—Hearne to Ennis with Engr. Farr
L. H. Whitacre	August 18, 1964	Train # 46—Ennis to Hearne with Engr. Gregory—Train # 2/347—Hearne to Ennis with Engr. Gregory (return trip made—Hearne to Ennis Aug. 19, 1964)
L. H. Whitacre	August 20, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 101—6:30 am to 2:30 pm—Miller yard 100 miles dead head Dallas (Miller yard) to Ennis

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
L. H. Whitacre	August 27, 1964	Train # 342—Ennis to Hearne with Engr. Gregory—Train # 3/347—Hearne to Ennis with Engr. Gregory (return trip Hearne to Ennis made Aug. 28, 1964)
L. H. Whitacre	September 12, 1964	Train # 258—Ennis to Hearne with Engr. Collins—Train # 339—Hearne to Ennis with Engr. Collins (round trip made same date, Sept. 12, 1964)
L. H. Whitacre	September 14, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 101—6:30 am to 2:30 pm—Miller yard 100 miles dead head Dallas (Miller yd) to Ennis
L. H. Whitacre	September 21, 1964	Train # 42—Ennis to Hearne with Engr. Blackwood—Train # 3/347—Hearne to Ennis with Engineer Blackwood (return trip—Hearne to Ennis made Sept. 22, 1964)
L. H. Whitacre	September 27, 1964	Pool freight, extra 7324 Ennis to Hearne with Engr. O'Brien.—Train # 3/337—Hearne to Ennis with Engr. O'Brien (return trip Hearne to Ennis made Sept. 28, 1964)
[17]		
L. H. Whitacre	October 15, 1964	100 miles dead head—Ennis to Dallas (Miller yard)—1 yard day—yard assignment # 101—6:30 am to 2:30 pm, Miller yard 100 miles dead head Dallas (Miller yd) to Ennis
L. H. Whitacre	October 17, 1964	1 yard day—yard assignment—3:59 pm to 11:59 pm—Ennis yard with Engineer Johns—Diesel Eng. # 182

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
L. H. Whitacre	October 24, 1964	Train #2/258—Ennis to Hearne with Engr. E. W. Harrison Pool freight extra—Hearne to Ennis with Engr. Harrison (round trip made same date, Oct. 24, 1964)
L. H. Whitacre	October 27, 1964	1 yard day—yard assignment—3:59 pm to 11:59 pm—Ennis yard with Engr. Johns
L. H. Whitacre	November 2, 1964	100 miles dead head Ennis to Ft. Worth 1 yard day—yard assignment—7 am to 3 pm, Fort Worth yard 100 miles dead head Ft. Worth to Ennis
L. H. Whitacre	November 5, 1964	100 miles dead head—Ennis to Ft. Worth 1 yard day—7 am to 3 pm, yard assignment, Fort Worth Yard 100 miles dead head Ft. Worth to Ennis
L. H. Whitacre	November 7, 1964	1 yard day—3:59 pm to 11:59 pm—Ennis Yard with Engr. Johns
L. H. Whitacre	November 9, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment #101—6:30 am to 2:30 pm, Miller yard 100 miles dead head Dallas (Miller yd) to Ennis
L. H. Whitacre	November 16, 1964	100 miles dead head Ennis to Dallas (Miller yard)—1 yard day—yard assignment #201—2:30 pm to 10:30 pm, Miller yard 100 miles dead head Dallas (Miller yard) to Ennis
L. H. Whitacre	November 23, 1964	112 miles dead head—Ennis to Hearne 1 yard day—yard assignment—3 pm to 11 pm, Hearne yard 112 miles dead head—Hearne to Ennis
[18]		
L. H. Whitacre	November 28, 1964	100 miles dead head—Ennis to Dallas (Miller yard) 1 yard day—yard assignment—11:50 pm to 7:59 am, Miller yard 100 miles dead head Dallas (Miller yd) to Ennis Nov. 29, 1964

Houston and Texas Central Seniority District Firemens Extra List at Houston, Texas

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
T. D. Baskin	July 7, 1964	1 yard day—yard assignment # 50— 7:30 am to 3:30 pm, Houston Terminal
T. D. Baskin	July 8, 1964	1 yard day—yard assignment # 50— 7:30 am to 3:30 pm, Houston Terminal
T. D. Baskin	July 14, 1964	1 yard day—yard assignment # 50— 7:30 am to 3:30 pm, Houston Terminal
T. D. Baskin	July 15, 1964	1 yard day—yard assignment # 50— 7:30 am to 3:30 pm, Houston Terminal
T. D. Baskin	July 17, 1964	1 yard day—yard assignment # 180— 3 pm to 11 pm, Houston Terminal
F. E. Gunter	July 6, 1964	1 yard day—yard assignment # 180— 3 pm to 11 pm, Houston Terminal
F. E. Gunter	July 7, 1964	1 yard day—yard assignment # 180— 3 pm to 11 pm, Houston Terminal
F. E. Gunter	July 8, 1964	1 yard day—yard assignment # 180— 3 pm to 11 pm, Houston Terminal
F. E. Gunter	July 9, 1964	1 yard day—yard assignment # 111— 11 pm to 7 am, Houston Terminal
F. E. Gunter	July 11, 1964	1 yard day—yard assignment # 67— 7:59 am to 3:59 pm, Houston Terminal
F. E. Gunter	July 12, 1964	1 yard day—yard assignment # 67— 7:59 am to 3:59 pm, Houston Terminal
F. E. Gunter	July 13, 1964	1 yard day—yard assignment # 180— 3 pm to 11 pm, Houston Terminal
G. W. Swain	July 1, 1964	1 yard day—yard assignment # 57— 7:59 am to 3:59 pm, Houston Terminal
[19]		
G. W. Swain	July 9, 1964	1 yard day—yard assignment # 180— 3 pm to 11 pm, Houston Terminal

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
G. W. Swain	July 11, 1964	1 yard day—yard assignment # 65— 7:59 am to 3:59 pm, Houston Ter- minal

Houston and Texas Central Seniority District Firemans Extra List At Austin,
Texas

Allen M. Johnson	August 26, 1964	1 yard day—yard assignment # 071 —Austin yard
Allen M. Johnson	October 27, 1964	Train # 253—Austin to Llano Train # 254—Llano to Austin (return trip, Llano to Austin Oct. 28, 1964)
Allen M. Johnson	October 29, 1964	1 yard day—yard assignment # 070, Austin yard
Allen M. Johnson	October 30, 1964	Train # 253—Austin to Llano Train # 254—Llano to Austin (return trip Llano to Austin on Oct. 31, 1964)
Allen M. Johnson	November 2, 1964	Train # 253—Austin to Llano Train # 254—Llano to Austin (return trip to Austin Nov. 3, 1964)
Allen M. Johnson	November 4, 1964	Train # 253—Austin to Llano Train # 254—Llano to Austin (return trip Llano to Austin Nov. 5, 1964)

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Houston and Texas Central Seniority District Extra List at San Antonio, Protecting
Dallas Pool

Allen M. Johnson	October 7, 1964	Train # 248—San Antonio to Hearne and return to San Antonio—total mileage, 368
A. R. Bostic	November 7, 1964	Pool frt. assignment—San Antonio to Hearne and Hearne to San Antonio with Engineer W. T. McVay
A. R. Bostic	November 8, 1964	Pool frt. assignment—San Antonio to Hearne and Hearne to San An- tonio with Engineer J. E. Moore

El Paso—Del Rio Seniority District Firemens Extra List at El Paso, Texas

M. H. Bridges	July 16, 1964	1 yard day—yard assignment # 152 —3 pm to 11 pm—El Paso yard
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Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
M. H. Bridges	July 17, 1964	1 yard day—yard assignment # 113 —3:55 pm to 11:55 pm—El Paso yard
M. H. Bridges	July 20, 1964	1 yard day—yard assignment # 110 —2:30 pm to 10:30 pm—El Paso yard
M. H. Bridges	July 21, 1964	1 yard day—yard assignment # 110 —2:30 pm to 10:30 pm—El Paso yard
M. H. Bridges	July 26, 1964	1 yard day—yard assignment # 92— 7 am to 3 pm—El Paso yard
M. H. Bridges	July 30, 1964	1 yard day—yard assignment # 111 —3:30 pm to 11:30 pm—El Paso yard
J. L. Holcomb	May 17, 1964	1 yard day—yard assignment # 112 —3:55 pm to 11:55 pm—El Paso yard
J. L. Holcomb	May 25, 1964	1 yard day—yard assignment # 131 —11 pm to 7 am—El Paso yard
J. L. Holcomb [21]	June 1, 1964	1 yard day—yard assignment # 90— 7:30 am to 3:30 pm—El Paso yard
J. L. Holcomb	June 4, 1964	1 yard day—yard assignment # 150 —7 am to 3 pm—El Paso yard
J. L. Holcomb	June 7, 1964	1 yard day—yard assignment # 150 —7 am to 3 pm—El Paso yard
J. L. Holcomb	June 9, 1964	1 yard day—yard assignment # 150 —7 am to 3 pm—El Paso yard
J. L. Holcomb	June 16, 1964	1 yard day—yard assignment # 151 —7:55 am to 3:55 pm—El Paso yard
J. L. Holcomb	June 18, 1964	1 yard day—yard assignment # 94— 7:55 am to 3:55 pm—El Paso yard
J. L. Holcomb	July 5, 1964	1 yard day—yard assignment # 150 —7 am to 3 pm—El Paso yard

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. L. Holcomb	July 17, 1964	1 yard day—yard assignment # 114 —3:55 pm to 11:55 pm—El Paso yard
J. L. Holcomb	July 21, 1964	1 yard day—yard assignment # 111 —3:30 pm to 11:30 pm—El Paso yard
J. L. Holcomb	September 8, 1964	1 yard day—yard assignment # 150 —7 am to 3 pm—El Paso yard
J. L. Holcomb	September 9, 1964	1 yard day—yard assignment # 134 —11:55 pm to 7:55 am—El Paso yard
J. L. Holcomb	September 16, 1964	1 yard day—yard assignment # 134 —11:55 pm to 7:55 am—El Paso yard
J. L. Holcomb	September 19, 1964	1 yard day—yard assignment # 135 —11:55 pm to 7:55 am—El Paso yard
J. L. Holcomb	October 8, 1964	1 yard day—yard assignment # 132 —11:30 pm to 7:30 am—El Paso yard
J. L. Holcomb	October 15, 1964	1 yard day—yard assignment # 132 —11:30 pm to 7:30 am—El Paso yard
J. L. Holcomb	October 23, 1964	1 yard day—yard assignment # 111 —3:30 pm to 11:30 pm—El Paso yard
J. L. Holcomb	October 25, 1964	1 yard day—yard assignment # 150 —7 am to 3 pm—El Paso yard
J. L. Holcomb	October 28, 1964	1 yard day—yard assignment # 150 —7 am to 3 pm—El Paso yard
J. L. Holcomb	October 29, 1964	1 yard day—yard assignment # 150 —7 am to 3 pm—El Paso yard
[22]		
J. L. Holcomb	November 1, 1964	1 yard day—yard assignment # 151 —7:55 am to 3:55 pm—El Paso yard

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. L. Holcomb	November 4, 1964	1 yard day—yard assignment #111—3:30 pm to 11:30 pm—El Paso yard
L. S. Malone	May 15, 1964	1 yard day—yard assignment #94—7:55 am to 3:55 pm—El Paso yard
L. S. Malone	May 22, 1964	1 yard day—yard assignment #94—7:55 am to 3:55 pm—El Paso yard
L. S. Malone	May 23, 1964	1 yard day—yard assignment #150—7 am to 3 pm—El Paso yard
L. S. Malone	June 1, 1964	1 yard day—yard assignment #94—7:55 am to 3:55 pm—El Paso yard
L. S. Malone	September 15, 1964	1 yard day—yard assignment #134—11:55 pm to 7:55 am—El Paso yard
L. S. Malone	September 16, 1964	Pool freight assignment (SSE) El Paso to Valentine called out of El Paso for 10:10 pm—Return trip claimed Valentine to El Paso
L. S. Malone	September 18, 1964	1 yard day—yard assignment #135—11:55 pm to 7:55 am—El Paso yard
L. S. Malone	October 15, 1964	1 yard day—yard assignment #132—11:30 pm to 7:30 am—El Paso yard
L. S. Malone	October 25, 1964	1 yard day—yard assignment #151—7:55 am to 3:55 pm—El Paso yard
L. S. Malone	October 28, 1964	1 yard day—yard assignment #111—3:30 pm to 11:30 pm—El Paso yard
L. S. Malone	October 30, 1964	1 yard day—yard assignment #111—3:30 pm to 11:30 pm—El Paso yard
L. S. Malone	November 19, 1964	1 yard day—yard assignment #132—11:30 pm to 7:30 am—El Paso yard
T. W. McKenzie	July 15, 1964	1 yard day—yard assignment #94—7:55 am to 3:55 pm—El Paso yard

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
T. W. McKenzie	July 16, 1964	1 yard day—yard assignment #113—3:55 pm to 11:55 pm—El Paso yard
T. W. McKenzie	July 22, 1964	1 yard day—yard assignment #111—3:30 pm to 11:30 pm—El Paso yard
[23]		
T. W. McKenzie	July 24, 1964	1 yard day—yard assignment #132—11:30 pm to 7:30 am—El Paso yard
T. W. McKenzie	July 27, 1964	1 yard day—yard assignment #110—2:30 pm to 10:30 pm—El Paso yard
T. W. McKenzie	July 28, 1964	1 yard day—yard assignment #131—11 pm to 7 am—El Paso yard
T. W. McKenzie	July 29, 1964	1 yard day—yard assignment #112—3:55 pm to 11:55 pm—El Paso yard
T. W. McKenzie	July 10, 1964	1 yard day—yard assignment #114—3:55 pm to 11:55 pm—El Paso yard
T. W. McKenzie	September 3, 1964	1 yard day—yard assignment #150—7 am to 3 pm—El Paso yard
T. W. McKenzie	September 8, 1964	1 yard day—yard assignment #92—7 am to 3 pm—El Paso yard
T. W. McKenzie	September 10, 1964	1 yard day—yard assignment #132—11:30 pm to 7:30 am—El Paso yard
T. W. McKenzie	September 14, 1964	1 yard day—yard assignment #134—11:55 pm to 7:55 am—El Paso yard
T. W. McKenzie	September 16, 1964	Pool freight assignment operated as S.S.E. El Paso at 2:15 am Claim return trip Valentine to El Paso of same pool frt. assignment

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
T. W. McKenzie	September 18, 1964	Pool freight assignment operated as S.S.E. El Paso to Valentine—called out of El Paso for 2:15 am Claim return trip—Valentine to El Paso of same pool freight assignment
T. W. McKenzie	October 1, 1964	1 yard day—yard assignment # 132—11:30 pm to 7:30 am—El Paso yard
T. W. McKenzie	October 8, 1964	1 yard day—yard assignment # 135—11:55 pm to 7:55 am —El Paso yard
T. W. McKenzie	October 10, 1964	1 yard day—yard assignment # 131—7:55 am to 3:55 pm—El Paso yard
T. W. McKenzie [24]	October 11, 1964	1 yard day—yard assignment # 92—7 am to 3 pm—El Paso yard
T. W. McKenzie	October 24, 1964	1 yard day—yard assignment # 151—7:55 am to 3:55 pm—El Paso yard
T. W. McKenzie	October 26, 1964	1 yard day—yard assignment # 111—3:30 pm to 11:30 pm—El Paso yard
T. W. McKenzie	October 29, 1964	1 yard day—yard assignment # 111—3:30 pm to 11:30 pm—El Paso yard
T. W. McKenzie	October 30, 1964	Pool freight assignment operated as (CB) El Paso to Valentine called out of El Paso for 9:30 pm Claim return trip Valentine to El Paso of same pool freight assignment
J. Williamson	June 18, 1964	1 yard day—yard assignment # 110—2:30 pm to 10:30 pm—El Paso yard
R. B. Rosson	July 15, 1964	1 yard day—yard assignment # 110—2:30 pm to 10:30 pm—El Paso yard

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
R. B. Rosson	September 8, 1964	1 yard day—yard assignment #134 —11:55 pm to 7:55 am—El Paso yard

Houston—Victoria—Del Rio Seniority District Firemens Extra List
at San Antonio Texas

J. A. Bounds	September 25, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. E. E. DeArment
J. A. Bounds	September 29, 1964	Train #250—San Antonio to Hearne —called out of San Antonio for 10:30 Engr. W. C. Waedekin Claim return trip—Hearne to San Antonio with Engr. W. C. Waedekin
A. N. Burge	September 7, 1964	Train 2/248—San Antonio to Hearne—called out of San Antonio for 12:30 am with Engr. N. Z. Bush Claim return trip—Hearne to San Antonio with Engr. N. Z. Bush
[25]		
A. N. Burge	October 2, 1964	Pool freight extra 803 east—San An- tonio to Glidden with Engr. T. E. Stiteler—called out of San Antonio for 2:15 am Claim return trip— Glidden to San Antonio with T. E. Stiteler
A. N. Burge	October 4, 1964	Train #248—San Antonio to Hearne —called out of San Antonio for 1:40 am with Engineer L. J. Seabaugh Claim return trip—Hearne to San Antonio with Engr. L. J. Seabaugh
A. N. Burge	October 7, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. B. F. Skonetski
A. N. Burge	October 12, 1964	Train #84—San Antonio to Glidden —called out of San Antonio for 7:45 am with Engr. D. C. Reynolds Claim return trip—Glidden to San Antonio with Engr. D. C. Reynolds

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
A. N. Burge	October 20, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engineer C. Walker
A. N. Burge	October 23, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. B. F. Skonetski
A. N. Burge	October 26, 1964	1 yard day—yard assignment—3 pm to 11 pm, San Antonio yard with Engr. W. W. McMillian
A. N. Burge	October 28, 1964	Train # 248—San Antonio to Hearne—called out of San Antonio for 3:15 am with Engr. E. Jenkins Claim return trip—Hearne to San Antonio with Engineer E. Jenkins
A. N. Burge	November 2, 1964	Pool freight extra # 616 east San Antonio to Glidden—Called out of San Antonio for 5:45 am with Engr. M. M. Grahman Claim return trip—Glidden to San Antonio with Engr. M. M. Grahman
A. N. Burge	November 4, 1964	Claim dead head mileage, San Antonio to Hearne on Train # 248—called out of San Antonio for 1:30 am with Engr. D. T. McVay Claim return trip—Hearne to San Antonio with Engr. D. T. McVay
[26]		
A. N. Burge	November 8, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engr. H. L. Thompson
A. N. Burge	November 9, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engr. D. C. Reynolds
A. N. Burge	November 11, 1964	Claim dead head mileage—San Antonio to Hearne on train extra east called out of San Antonio for 1:45 am with Engr. J. T. Lovelace Claim return trip—Hearne to San Antonio with Engr. J. T. Lovelace

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. R. Bates	June 1, 1964	1 yard day—yard assignment # 20— 3 pm to 11 pm, San Antonio yard with Engineer W. P. Jennings
J. R. Bates	June 4, 1964	1 yard day—yard assignment # 24— 3:45 pm to 11:45 pm, San Antonio yard with Engr. Kosharek
J. R. Bates	June 28, 1964	1 yard day—yard assignment # 26— San Antonio yard with Engr. Addecox
J. R. Bates	September 8, 1964	Pool freight extra # 7453 San An- tonio to Hearne—called out of San Antonio for 5:45 am with Engr. D. T. McVay Claim return trip—Hearne to San Antonio with Engr. D. T. McVay
J. R. Bates	September 20, 1964	Pool freight extra # 246—San An- tonio to Glidden—called out of San Antonio for 4:13 am with Engr. T. E. Stiteler Claim return trip—Glidden to San Antonio with Engr. T. E. Stiteler
J. R. Bates	September 27, 1964	Pool freight extra 620—San Antonio to Glidden—called out San Antonio 3:20 am with Engr. T. E. Stiteler Claim return trip—Glidden to San Antonio with Engr. T. E. Stiteler
J. R. Bates	September 29, 1964	Train # 84—San Antonio to Glidden —called out of San Antonio for 6:00 am with Engr. F. L. Wallace Claim return trip—Glidden to San Antonio with Engr. F. L. Wallace
J. R. Bates	October 5, 1964	Pool freight extra 5869—San An- tonio to Glidden—called out of San Antonio for 1:30 am with Engr. T. E. Stiteler Claim return trip—Glidden to San Antonio with Engr. T. E. Stiteler

Name of Fireman [27]	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. R. Bates	October 7, 1964	Train # 248—San Antonio to Hearne —called out of San Antonio for 3 am Engr. F. H. Payne Claim return trip—Glidden to San Antonio with Engr. F. H. Payne
J. R. Bates	October 11, 1964	1 yard day—yard assignment—2:30 pm to 10:30 pm, San Antonio yard Engr. W. P. Jennings
J. R. Bates	October 24, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard Engr. C. Walker
J. R. Bates	October 26, 1964	Train # 246—San Antonio to Hearne —called out of San Antonio to Hearne for 1:40 pm with Engr. L. J. Seabaugh Claim return trip—Hearne to San Antonio with Engr. L. J. Seabaugh
J. R. Bates	October 28, 1964	Claim dead head mileage—San An- tonio to Hearne on Train # 248— called out of San Antonio for 3:15 am with Engr. M. W. Reed Claim return trip—Hearne to San Antonio with Engr. M. W. Reed
J. R. Bates	November 1, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. G. R. Barcellona
J. R. Bates	November 4, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engr. E. E. DeArment
J. R. Bates	November 6, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. B. F. Skonetski
D. L. Duke Jr.	September 30, 1964	Pool freight extra # 5847—San An- tonio to Glidden—called out of San Antonio for 3:15 am with Engr. T. E. Stiteler Claim return trip—Glidden to San Antonio with Engr. Stiteler

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
D. L. Duke Jr.	October 5, 1964	Pool freight extra #819—San Antonio to Hearne—called out of San Antonio for 5 am with Engr. N. Z. Bush Claim return trip—Hearne to San Antonio with Engr. N. Z. Bush
[28]		
D. L. Duke Jr.	October 11, 1964	1 yard day—yard assignment—3 pm to 11 pm, San Antonio yard with Engr. H. G. Wied
D. L. Duke Jr.	October 12, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engr. J. L. Rogers
D. L. Duke Jr.	October 28, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engr. E. E. DeArment
D. L. Duke Jr.	November 9, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engineer J. H. Burnett
J. T. Everett	September 26, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engineer M. M. Grahman
J. T. Everett	October 1, 1964	Train #84—San Antonio to Glidden—called out of San Antonio for 6 am with Engr. F. L. Wallace Claim return trip—Glidden to San Antonio with Engr. F. L. Wallace
J. T. Everett	October 6, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio with Engineer C. Walker
J. T. Everett	October 7, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engr. E. E. DeArment
J. T. Everett	October 9, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. B. F. Skonetski
J. T. Everett	October 12, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engr. C. E. Jakeman Jr.

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. T. Everett	October 21, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engr. E. E. DeArment
J. T. Everett	October 24, 1964	Pool freight extra 371—San Antonio to Glidden—called out of San Antonio for 2:45 am with Engr. R. J. E. Smith Claim return trip—Glidden to San Antonio with Engr. R. J. E. Smith
J. T. Everett	November 2, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. G. Barcellona
[29]		
J. T. Everett	November 5, 1964	Train # 84—San Antonio to Glidden—called out of San Antonio for 7:45 am with Engr. F. L. Wallace Claim return trip—Glidden to San Antonio with Engr. F. L. Wallace
J. T. Everett	November 8, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. R. G. Jennings
J. T. Everett	November 10, 1964	Train # 84—San Antonio to Glidden—called out of San Antonio to Glidden for 7:45 am with Engr. F. L. Wallace Claim return trip—Glidden to San Antonio with Engr. F. L. Wallace
R. D. Grunewald	June 5, 1964	1 yard day—yard assignment—7:45 am to 3:45 pm, San Antonio yard with Engr. J. W. Rush
R. D. Grunewald	June 6, 1964	Pool freight extra 240—San Antonio to Glidden—called out of San Antonio for 5:30 am with Engr. T. E. Stiteler Claim return trip—Glidden to San Antonio with Engr. T. E. Stiteler
R. D. Grunewald	October 25, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engr. J. F. Caldwell

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
G. D. Givens	July 22, 1964	Train # 2/243—San Antonio to Del Rio—called out of San Antonio for 2:10 am with Engr. R. L. Crafton Claim return trip Del Rio to San Antonio with Engr. R. L. Crafton
G. D. Givens	July 26, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. R. G. Nichols
G. D. Givens	August 19, 1964	Train # 248—San Antonio to Hearne—called out of San Antonio for 1:00 am with Engr. V. E. Williamson Claim return trip—Hearne to San Antonio with Engr. V. E. Williamson
G. D. Givens	August 15, 1964	Pool freight extra 7221—San Antonio to Hearne—called out of San Antonio for 4:30 am with Engr. C. J. Farris Claim return trip—Hearne to San Antonio with Engr. C. J. Farris
[30]		
G. D. Givens	August 17, 1964	Train # 243—San Antonio to Del Rio—called out of San Antonio for 1:15 am with Engr. J. C. Arrington Claim return trip—Del Rio to San Antonio with Engr. J. C. Arrington
C. B. Jordan	November 11, 1964	Pool freight extra—San Antonio to Hearne—called out of San Antonio for 1:45 am with Engr. C. J. Logan Claim return trip—Hearne to San Antonio with Engr. C. J. Logan
W. S. Kelley	September 2, 1964	Train # 243—San Antonio to Del Rio—called out of San Antonio for 12:35 am with Engr. J. L. Hill Claim return trip—Del Rio to San Antonio with Engr. J. L. Hill
W. S. Kelley	September 7, 1964	Train # 243—San Antonio to Del Rio—called out of San Antonio for 12:50 am with Engr. W. T. Chidgey Claim return trip—Del Rio to San Antonio with Engr. W. T. Chidgey

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
W. S. Kelley	September 25, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer C. H. Brown
W. S. Kelley	October 1, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer E. E. DeArment
W. S. Kelley	October 12, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engineer C. Walker
W. S. Kelley	October 23, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer E. E. DeArment
W. S. Kelley	October 26, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer R. J. E. Smith
W. S. Kelley	November 1, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer M. M. Grohman
W. S. Kelley	November 10, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. J. L. Mowrey
[31]		
J. F. Luedecke	August 19, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engineer R. G. Nichols
J. F. Luedecke	August 22, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engineer R. G. Nichols
J. F. Luedecke	August 23, 1964	Pool freight extra 635—San Antonio to Glidden—called out of San Antonio for 2:20 am with Engr. T. E. Stiteler Claim return trip to San Antonio with engr. T. E. Stiteler
J. F. Luedecke	August 29, 1964	Pool freight extra 973—San Antonio to Hearne—called out of San Antonio for 5 am with Engr. R. A. Coleman Claim return trip—Hearne to San Antonio with Engr. R. A. Coleman

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. F. Luedecke	September 2, 1964	Pool freight extra 7234—San Antonio to Glidden—called out of San Antonio for 2:45 am with Engr. T. E. Stiteler Claim return trip—Glidden to San Antonio with Engr. T. E. Stiteler
J. F. Luedecke	September 14, 1964	Pool freight extra 7449—San Antonio to Hearne—called out of San Antonio for 4:15 am Claim return trip—Hearne to San Antonio with engineer who was engineer on X7449—San Antonio to Hearne on date of Sept. 14, 1964
J. F. Luedecke	September 24, 1964	Pool freight extra 377—San Antonio to Glidden—called out of San Antonio for 12:15 am with Engr. T. E. Stiteler Claim return trip—Glidden to San Antonio with Engr. T. E. Stiteler
J. F. Luedecke	October 4, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer A. J. Yelvington
J. F. Luedecke	October 12, 1964	Pool freight extra San Antonio to Corpus Christi—called out of San Antonio for 2 pm with Engr. L. G. Dilworth Claim return trip—Corpus Christi to San Antonio with Engr. L. G. Dilworth
[32]		
J. F. Luedecke	October 20, 1964	Train # 84—San Antonio to Glidden—called out of San Antonio for 7:45 am with Engr. F. L. Wallace Claim return trip—Glidden to San Antonio with Engr. F. L. Wallace
J. F. Luedecke	October 24, 1964	Train # 84—San Antonio to Glidden—called out of San Antonio for 7:45 am with Engr. F. L. Wallace Claim return trip—Glidden to San Antonio with Engr. F. L. Wallace

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. F. Luedecke	October 26, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engr. J. L. Rogers
J. F. Luedecke	October 28, 1964	Pool freight extra 5813—San Antonio to Glidden—called out of San Antonio for 1:15 am with Engr. J. B. Pfeifer Claim return trip—Glidden to San Antonio with Engr. J. B. Pfeifer
J. F. Luedecke	November 5, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm with Engr. E. E. DeArment
J. F. Luedecke	November 9, 1964	Train # 85—San Antonio to Spofford (local) called out of San Antonio for 9 am with Engr. J. E. Day Claim return trip—Spofford to San Antonio, Train # 86 with Engr. J. E. Day, Nov. 10, 1964
J. F. Luedecke	November 11, 1964	Train # 84—San Antonio to Glidden—called out of San Antonio for 7:45 am with Engr. J. E. Miller Claim return trip—Glidden to San Antonio, Train # 83 with Engr. J. E. Miller, Nov. 12, 1964
E. L. Long, Jr.	October 11, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engr. C. E. Jakeman, Jr.
E. L. Long, Jr.	October 22, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. B. F. Skonetski
E. L. Long, Jr.	October 27, 1964	Train # 41—San Antonio to Del Rio—called out of San Antonio for 3 pm with Engr. R. H. Weynand Claim return trip—Del Rio to San Antonio with Engr. R. M. Weynand
[33]		
E. L. Long, Jr.	November 8, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer C. E. Jakeman, Jr.

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
E. L. Long, Jr.	November 10, 1964	1 yard day—yard assignment—3:30 pm to 11:30 pm, San Antonio yard with Engineer N. R. Barsch
E. L. Long, Jr.	November 12, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, San Antonio yard with Engineer E. E. DeArment
R. L. Mack, Jr.	September 8, 1964	Train #243—San Antonio to Glidden—called out of San Antonio for 3:25 am with Engr. C. D. Shaw Claim return trip—Glidden to San Antonio with Engr. C. D. Shaw
R. L. Mack, Jr.	September 13, 1964	Pool freight extra 635—San Antonio to Del Rio—Called out of San Antonio for 6:30 am with Engr. W. M. Edwards Claim return trip—Del Rio to San Antonio with Engr. W. M. Edwards
R. L. Mack, Jr.	September 30, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer E. E. DeArment
R. L. Mack, Jr.	October 9, 1964	Pool Freight extra—San Antonio to Glidden—called out of San Antonio for 1:20 am with Engr. T. R. Stiteler Claim return trip—Glidden to San Antonio with Engr. T. E. Stiteler
R. L. Mack, Jr.	October 11, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. T. H. Addcox
R. L. Mack, Jr.	October 21, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engineer C. Walker
R. L. Mack, Jr.	October 24, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. J. F. Caldwell
R. L. Mack, Jr.	October 27, 1964	Pool freight extra 7476—San Antonio to Del Rio—called out of San Antonio for 4:25 pm with Engr. M. Black Claim return trip—Del Rio to San Antonio with Engr. M. Black

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
R. L. Mack, Jr.	November 4, 1964	Pool freight extra—San Antonio to Glidden—called out of San Antonio for 3:25 am with Engr. M. A. Fischinger Claim return trip—Glidden to San Antonio with Engr. M. A. Fischinger
[34]		
R. L. Mack, Jr.	November 6, 1964	Pool freight extra—San Antonio to Glidden—called out of San Antonio for 1:00 am with Engr. M. A. Fischinger Claim return trip—Glidden to San Antonio with Engr. M. A. Fischinger
R. L. Mack, Jr.	November 10, 1964	Train # 246—San Antonio to Hearne—called out of San Antonio for 3 pm with Engr. N. Z. Bush Claim return trip—Hearne to San Antonio with Engr. N. Z. Bush
P. W. Newman	October 4, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engr. J. L. Rogers
P. W. Newman	October 8, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. B. F. Skonetski
P. W. Newman	October 11, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. A. J. Fuller
P. W. Newman	October 22, 1964	Pool freight extra 7237—San Antonio to Glidden—called out of San Antonio for 12:31 am with Engr. T. E. Stiteler Claim return trip, Glidden to San Antonio with Engr. Stiteler
P. W. Newman	October 26, 1964	Pool freight extra 818—San Antonio to Hearne—called out of San Antonio for 5 am with Engr. C. J. Logan Claim return trip, Hearne to San Antonio with Engr. C. J. Logan

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
P. W. Newman	November 4, 1964	Train # 84—San Antonio to Glidden —called out of San Antonio for 7:45 am with Engr. A. J. Yehrington Claim return trip—Glidden to San Antonio, train # 83 with Engineer A. J. Yehrington, Nov. 5, 1964
P. W. Newman	November 6, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer E. E. DeArment
P. W. Newman	November 9, 1964	Train # 84, San Antonio to Glidden —called out of San Antonio for 7:45 am with Engr. J. E. Miller Claim return trip, Glidden to San Antonio with Engr. J. E. Miller, train # 83 Nov. 10, 1964
P. W. Newman	November 12, 1964	Train # 84, San Antonio to Glidden —called out of San Antonio for 7:45 am with Engineer F. L. Wallace Claim return trip—Glidden to San Antonio, train # 83 with Engineer F. L. Wallace
[35]		
R. L. Petty	July 22, 1964	Pool freight extra 7224—San Antonio to Glidden—called out of San An- tonio for 3:30 am with Engr. M. A. Fischinger Claim return trip—Glidden to San Antonio with Engr. M. A. Fischinger
R. L. Petty	July 26, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. W. C. Goates
R. L. Petty	July 30, 1964	Pool freight extra 613—San Antonio to Glidden—called out of San An- tonio for 2:45 am with Engr. M. A. Fischinger Claim return trip—Glidden to San Antonio with Engr. M. A. Fischinger

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
R. L. Petty	August 1, 1964	Pool freight extra 608—San Antonio to Hearne—called out of San Antonio for 5:40 am with Engr. E. Jenkins Claim return trip—Hearne to San Antonio with Engr. E. Jenkins
R. L. Ricks	September 8, 1964	Train # 84—San Antonio to Glidden—called out of San Antonio for 6 am with Engr. F. L. Wallace Claim return trip—Glidden to San Antonio, Train # 83 of September 9, 1964 with Engr. F. L. Wallace
R. L. Ricks	October 6, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. B. F. Skonetski
R. L. Ricks	October 11, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer J. L. Rogers
R. L. Ricks	October 21, 1964	Pool freight extra—San Antonio to Hearne—called out of San Antonio for 6:30 am with Engr. J. B. Pfeifer Claim return trip—Hearne to San Antonio with Engr. J. B. Pfeifer
R. L. Ricks	October 24, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engineer E. E. DeArment
R. L. Ricks	October 26, 1964	Train # 84—San Antonio to Glidden—called out of San Antonio for 7:45 am with Engr. U. L. McNiel Claim return trip—Glidden to San Antonio, Train # 83 of Oct. 27, 1964 with Engr. U. L. McNiel
[36]		
R. L. Ricks	October 29, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. B. F. Skonetski
R. L. Ricks	November 4, 1964	Train # 243—San Antonio to Del Rio—called out of San Antonio for 1:30 am with Engr. D. T. McVay Claim return trip—Del Rio to San Antonio with Engr. D. T. McVay

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
R. L. Ricks	November 7, 1964	Pool freight extra—San Antonio to Hearne—called out of San Antonio for 6:20 am with Engr. D. T. McVay Claim return trip—Hearne to San Antonio with Engr. D. T. McVay
R. L. Ricks	November 11, 1964	1 yard day—yard assignment—3 pm to 11 pm, San Antonio yard with Engr. C. E. Jakeman, Jr.
G. W. Prause	August 30, 1964	Train # 240—San Antonio to Glidden—called out of San Antonio for 1:20 am with Engr. T. E. Stiteler Claim return trip—Glidden to San Antonio with Engr. T. E. Stiteler
G. W. Prause	October 2, 1964	Train # 84—San Antonio to Glidden—called out of San Antonio for 6 am with Engr. A. J. Yehrington Claim return trip—Glidden to San Antonio Train # 83 of Oct. 3, 1964 with Engr. A. J. Yehrington
G. W. Prause	October 5, 1964	Train # 84—San Antonio to Glidden—called out of San Antonio for 6 am with Engr. J. L. Mowrey Claim return trip—Glidden to San Antonio of Oct. 6, 1964 with Engr. J. L. Mowrey
G. W. Prause	October 23, 1964	Pool freight extra 5808—San Antonio to Hearne—called out of San Antonio for 4 am with Engr. A. Stiles Claim return trip—Hearne to San Antonio with Engr. A. Stiles
G. W. Prause	October 25, 1964	Pool freight extra 7447—San Antonio to Hearne—called out of San Antonio for 4:30 am with Engr. E. Jenkins Claim return trip—Hearne to San Antonio with Engr. E. Jenkins

Name of Fireman [37]	Date Lost	Yard and/or Road Jobs Operated Without Fireman
G. W. Prause	October 27, 1964	Train # 84—San Antonio to Glidden —called out of San Antonio for 7:45 am with Engr. F. L. Wallace Claim return trip—Glidden to San Antonio of Oct. 28, 1964, Train # 83 with Engineer F. L. Wallace
G. W. Prause	November 11, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engr. E. E. DeArment
J. R. Wurz	September 12, 1964	Pool freight extra # 5673—San An- tonio to Glidden—called out of San Antonio for 3 am with Engr. C. B. Harper Claim return trip—Glidden to San Antonio with Engr. C. B. Harper
J. R. Wurz	September 17, 1964	Pool freight extra 244—San Antonio to Glidden—called out of San An- tonio for 2:15 am with Engr. M. A. Fischinger Claim return trip—Glidden to San Antonio with Engr. M. A. Fischinger
J. R. Wurz	October 4, 1964	Train # 248—San Antonio to Hearne —called out of San Antonio for 1:40 am with Engr. L. J. Seabaugh Claim return trip—Hearne to San Antonio with Engr. L. J. Seabaugh
J. R. Wurz	October 22, 1964	1 yard day—yard assignment—7:30 am to 3:30 pm, San Antonio yard with Engr. E. E. DeArment
J. R. Wurz	October 25, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. C. R. Barcellona
J. R. Wurz	November 4, 1964	Train # 248—San Antonio to Hearne —called out of San Antonio for 1:30 am with Engr. N. Z. Bush Claim return trip—Hearne to San Antonio with Engr. N. Z. Bush

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
J. J. Ward	November 5, 1964	1 yard day—yard assignment—7 am to 3 pm, San Antonio yard with Engr. B. F. Skonetski
J. J. Ward	November 9, 1964	Pool freight extra San Antonio to Hearne—called out of San Antonio for 11 am with Engr. S. P. Gibson Claim return trip—Hearne to San Antonio with Engr. S. P. Gibson
[38]		
J. J. Ward	November 11, 1964	Pool freight extra San Antonio to Hearne—called out of San Antonio for 11 am with Engr. A. Stiles Claim return trip—Hearne to San Antonio with Engr. A. Stiles
R. H. Wright	September 25, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, San Antonio yard with Engineer C. Walker
Houston—Victoria—Del Rio Seniority District Firemens Extra List at Victoria Texas		
C. H. Berger	October 2, 1964	Pool freight extra Victoria to Houston and return with Engineer Weitzel—called out of Victoria for 8:15 pm Oct. 2, 1964
C. H. Berger	October 5, 1964	1 yard day—yard assignment—3:59 pm to 11:59 pm, Victoria yard
M. L. Diebel	October 3, 1964	1 yard day—yard assignment—3:59 pm to 11:59 pm, Victoria yard
M. L. Diebel	October 4, 1964	Pool freight extra—Victoria to Houston and return with Engineer Durant—called out of Victoria for 8:30 pm
M. L. Diebel	October 6, 1964	1 yard day—yard assignment—3:59 pm to 11:59 pm, Victoria yard
P. A. Jurica	October 6, 1964	Pool freight extra—Victoria to Corpus Christi and return with Engr. Durant—called out of Victoria for 6:30 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
P. A. Jurica	October 8, 1964	Pool freight extra—Victoria to Houston and return with Engr. Weitzel—called out of Victoria for 10:15 pm
P. A. Jurica	October 10, 1964	Pool freight extra—Victoria to Houston and return with Engr. Weitzel—called out of Victoria for 9:30 pm
P. A. Jurica	October 12, 1964	1 yard day—yard assignment—3:59 pm to 11:59 pm, Victoria yard
A. R. Koehl	October 18, 1964	Pool freight extra 624—Victoria to Corpus Christi and return with Engr. G. A. Selby
[39]		
R. F. Petrus	October 6, 1964	Pool freight extra—Victoria to Houston and return to Victoria with Engr. Weitzel—called out of Victoria for 9:15 pm
R. F. Petrus	October 8, 1964	Pool freight extra—Victoria to Corpus Christi and return to Victoria with Engr. Duran—called out of Victoria for 7:00 pm
R. F. Petrus	October 10, 1964	Pool freight extra—Victoria to Corpus Christi and return with Engr. Duran—called out of Victoria for 6:40 pm
R. F. Petrus	October 12, 1964	1 yard day—yard assignment—3:59 pm to 11:59 pm, Victoria yard
R. W. Obsta	October 1, 1964	Pool freight extra—Victoria to Houston with Engr. Hilmers—called out of Victoria for 9:45 pm
R. W. Obsta	October 3, 1964	Pool freight extra—Victoria to Houston and return to Victoria with Engr. Hilmers—called out of Victoria for 8:15 pm
R. W. Obsta	October 7, 1964	Pool freight extra—Victoria to Houston and return to Victoria with Engr. Sitterle—called out of Victoria for 8:45 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
R. W. Obsta	October 9, 1964	Pool freight extra—Victoria to Corpus Christi and return to Victoria with Engr. Hilmer—called out of Victoria for 7:15 pm
R. W. Obsta	October 11, 1964	Pool freight extra—Victoria to Houston and return to Victoria with Engr. Sitterle—called out of Victoria for 9:30 pm

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Morgan, Louisiana & Texas Seniority District Firemen's Extra List at
Algiers, Louisiana (New Orleans Terminal)

W. J. Adams	November 6, 1964	1 yard day—yard assignment Nos. 304, 307 and 311, New Orleans Terminal worked without a fireman caused me losing this date on fireman's extra list
W. J. Adams	November 10, 1964	1 yard day—yard assignment #311, New Orleans Terminal, operated without a fireman caused me to lose this date
A. J. Trosclair	September 23, 1964	1 yard day—yard assignment #307, operated this date without a fireman, New Orleans Terminal, which resulted me losing this date off fireman extra list
A. J. Trosclair	September 24, 1964	1 yard day—yard assignment #307 operated this date without a fireman, New Orleans Terminal, which resulted me losing this date off fireman extra list
A. J. Trosclair	October 22, 1964	1 yard day—yard assignment #307 operated this date without a fireman, New Orleans Terminal, which resulted me losing this date off fireman extra list
A. J. Trosclair	October 24, 1964	1 yard day—yard assignment #307 operated this date without a fireman New Orleans Terminal, which resulted me losing this date off fireman extra list

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
A. J. Trosclair	November 2, 1964	1 yard day—yard assignment #311 operated this date, New Orleans Terminal, without a fireman which resulted me losing this date off fireman extra list

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Morgan, Louisiana & Texas Seniority District Firemen's Extra List at Lafayette Louisiana

E. D. Revett	May 27, 1964	<p>100 miles dead head—Lafayette, La. to New Iberia, La.</p> <p>Claim earnings train #527—New Iberia to Eunice</p> <p>Claim return trip, train #528—Eunice to New Iberia, La. May 28, 1964</p> <p>Claim 100 miles dead head—New Iberia to Lafayette, La. May 28, 1964, to Union Terminal extra list</p>
E. D. Revett	May 30, 1964	<p>Claim 100 miles dead head—Lafayette, La. to New Iberia, La.</p> <p>Claim earnings of train #527 Saturday, May 27, 1964, New Iberia to Eunice</p> <p>Claim return trip of train #528 Monday, June 1, 1964, Eunice to New Iberia</p> <p>Claim 100 miles dead head New Iberia, La. to Lafayette June 1, 1964, returning home terminal extra list</p>
E. D. Revett	June 19, 1964	<p>Claim 100 miles dead head Lafayette to New Iberia, La.</p> <p>Claim earnings of train #527, New Iberia to Eunice Friday, June 19, 1964</p> <p>Claim earnings train #528, Eunice to New Iberia Saturday, June 20, 1964</p> <p>Claim 100 miles dead head, New Iberia to Lafayette to home terminal fireman extra list, June 20, 1964</p>

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
E. D. Revett	June 30, 1964	<p>Claim 100 miles dead head—Lafayette, La. to New Iberia</p> <p>Claim earnings train # 527, New Iberia to Eunice, Tuesday, June 30, 1964</p> <p>Claim earnings train # 528, Eunice to New Iberia Wednesday, July 1, 1964</p> <p>Claim 100 miles dead head, New Iberia to Lafayette to home terminal fireman extra list, July 1, 1964</p>
E. D. Revett	July 18, 1964	<p>Claim 100 miles dead head Lafayette to New Iberia</p> <p>Claim earnings train # 527, New Iberia to Eunice, Saturday, July 18 1964</p> <p>Claim earnings, train # 528, Eunice to New Iberia Monday, July 20, 1964 (Sunday layover at Eunice)</p> <p>Claim 100 miles dead head, New Iberia to Lafayette home terminal fireman extra list July 18, 1964</p>
[42]		
B. J. Andrus	May 20, 1964	<p>Claim 100 miles dead head Lafayette to New Iberia—</p> <p>Claim earnings, train # 527, New Iberia to Eunice</p> <p>Claim earnings, train # 528, Eunice to New Iberia, May 21, 1964</p> <p>Claim 100 miles dead head, New Iberia to Lafayette home terminal extra fireman list May 21, 1964</p>
B. J. Andrus	June 15, 1964	<p>Claim 100 miles dead head—Lafayette to New Iberia</p> <p>Claim earnings, train # 527, New Iberia to Eunice</p> <p>Claim earnings, train # 528—Eunice to New Iberia June 16, 1964</p> <p>Claim 100 miles dead head—New Iberia to Lafayette home terminal fireman extra list June 16, 1964</p>

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
B. J. Andrus	July 27, 1964	<p>Claim 100 miles dead head—Lafayette to New Iberia</p> <p>Claim earnings, train # 527—New Iberia to Eunice</p> <p>Claim earnings, Train # 528—Eunice to New Iberia July 28, 1964</p> <p>Claim 100 miles dead head—New Iberia to Lafayette home terminal fireman extra list</p>
B. J. Andrus	August 15, 1964	<p>Claim 100 miles dead head—Lafayette to New Iberia</p> <p>Claim earnings, train # 527—New Iberia to Eunice</p> <p>Claim earnings, train # 528—Eunice to New Iberia Monday, Aug. 17, 1964 (Sunday layover in Eunice Aug. 16, 1964)</p> <p>Claim 100 miles dead head—New Iberia to Lafayette home terminal fireman extra list Aug. 17, 1964</p>
B. J. Andrus	August 22, 1964	<p>Claim 100 miles dead head—Lafayette to New Iberia</p> <p>Claim earnings of train # 527, New Iberia to Eunice (Saturday, Aug. 22, 1964)</p> <p>Claim earnings of train # 528, Eunice to New Iberia Monday, Aug. 24, 1964</p> <p>Claim 100 miles dead head, New Iberia to Lafayette home terminal fireman extra list Aug. 24, 1964</p>
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B. J. Andrus	September 1, 1964	<p>Claim 100 miles dead head—Lafayette to New Iberia</p> <p>Claim earnings, train # 527, New Iberia to Eunice</p> <p>Claim earnings, train # 528—Eunice to New Iberia Sept. 2, 1964</p> <p>Claim 100 miles dead head—New Iberia to Lafayette home terminal extra fireman list Sept. 2, 1964</p>

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
B. J. Andrus	September 7, 1964	Claim 100 miles dead head—Lafayette to New Iberia Claim earnings, train # 527, New Iberia to Eunice Claim earnings, train # 528, Eunice to New Iberia Sept. 8, 1964
B. J. Andrus	September 9, 1964	Claim earnings, train # 527—New Iberia to Eunice Claim earnings, train # 528—Eunice to New Iberia Sept. 10, 1964 Claim 100 miles dead head, New Iberia to Lafayette home terminal extra fireman list Sept. 10, 1964

Houston, East & West Texas Seniority District Firemen's Extra List at
Lufkin, Texas

C. M. Luce	June 27, 1964	Pool freight extra Lufkin to Shreveport—called out of Lufkin for 12:40 am with Engr. Finn Return trip—Shreveport to Lufkin with Engr. Finn.
C. M. Luce	June 29, 1964	Train # 144—Lufkin to Shreveport, Louisiana with Engr. Finn Return trip—Shreveport, Louisiana to Lufkin, Texas with Engr. Finn

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Houston—Lafayette Seniority District Firemen's Extra List at Beaumont, Texas

E. S. Coleman	June 6, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	June 13, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	June 20, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
E. S. Coleman	June 23, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	June 26, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
E. S. Coleman	July 4, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Beaumont yard
E. S. Coleman	July 11, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	July 18, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	July 24, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
E. S. Coleman	July 25, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	July 28, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
E. S. Coleman	July 30, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	August 4, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	August 8, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	August 23, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
E. S. Coleman	August 29, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
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E. S. Coleman	September 4, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	September 6, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	September 10, 1964	Train # 60—local—Beaumont to Lake Charles—Claim return trip #59—Lake Charles to Beaumont Sept. 11, 1964
E. S. Coleman	September 12, 1964	1 yard day—yard assignment—2:30 pm to 10:30 pm, Beaumont yard
E. S. Coleman	September 19, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
E. S. Coleman	October 2, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	October 4, 1964	Train # 60—local—Beaumont to Lake Charles, La.—Claim return trip—local # 59 Oct. 5, 1964—Lake Charles, La. to Beaumont, Texas
E. S. Coleman	October 6, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, Beaumont yard
E. S. Coleman	October 9, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
E. S. Coleman	October 11, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
E. S. Coleman	October 13, 1964	Train # 60—local—Beaumont to Lake Charles, La.—Claim return trip train # 59—local—Lake Charles, La. to Beaumont Oct. 14, 1964
E. S. Coleman	November 1, 1964	Train # 60—local—Beaumont to Lake Charles, La.—Claim return trip, train # 59—Lake Charles, La. to Beaumont Nov. 2, 1964
E. S. Coleman	November 6, 1964	Train # 60—local—Beaumont to Lake Charles, La.—Claim return trip, train # 59—Lake Charles, La. to Beaumont Nov. 7, 1964
E. S. Coleman	November 9, 1964	1 yard day—yard assignment—3 pm to 11 pm, Beaumont yard
E. S. Coleman	November 26, 1964	Train # 60—local—Beaumont to Lake Charles, La.—Claim return trip, train # 59—Lake Charles to Beaumont
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E. L. Castilaw	August 30, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
E. L. Castilaw	September 5, 1964	1 yard day—yard assignment—2:30 pm to 10:30 pm, Beaumont yard
E. L. Castilaw	September 6, 1964	Train # 60—local—Beaumont to Lake Charles, La.—Claim return trip, train # 59—Lake Charles, La. to Beaumont Sept. 7, 1964

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
E. L. Castilaw	September 11, 1964	1 yard day—yard assignment—6:30 am to 2:20 pm, Beaumont yard
E. L. Castilaw	September 12, 1964	Claim earnings Orange switcher #2 operates Beaumont to Orange and return same date
H. J. Huval	September 3, 1964	1 yard day—yard assignment—2:30 pm to 10:30 pm, Beaumont yard
H. J. Huval	September 5, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
H. J. Huval	September 6, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
H. J. Huval	September 8, 1964	Train # 60—local—Beaumont to Lake Charles, La.—Claim return trip, train # 59, Lake Charles to Beaumont
S. A. McAlpin	October 3, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, Beaumont yard
S. A. McAlpin	October 4, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
S. A. McAlpin	October 6, 1964	Train # 60—local—Beaumont to Lake Charles, La.—Claim return trip, train # 59, Lake Charles, La. to Beaumont Oct. 7, 1964
S. A. McAlpin	October 10, 1964	Earnings Orange switcher #1—operates Beaumont to Orange and return
S. A. McAlpin	October 12, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Beaumont yard
O. Stockton	May 13, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
O. Stockton	May 31, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
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O. Stockton	June 8, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
O. Stockton	June 11, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
O. Stockton	June 27, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
O. Stockton	July 4, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
O. Stockton	July 10, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
O. Stockton	July 13, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
O. Stockton	July 22, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
O. Stockton	July 24, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
O. Stockton	July 28, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
O. Stockton	August 9, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
O. Stockton	September 1, 1964	Train # 60—Local—Beaumont to Lake Charles, La.—Claim return trip, train # 59—Lake Charles, La. to Beaumont of Sept. 2, 1964.
O. Stockton	September 5, 1964	Claim earnings of Orange switcher # 1 operates Beaumont to Orange and returning same date
O. Stockton	September 7, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Beaumont yard
O. Stockton	September 10, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
O. Stockton	September 12, 1964	Claim earnings Orange switcher # 1 —operates to Orange and returning same date
O. Stockton	September 14, 1964	Claim earnings Orange switcher # 1 —operates Beaumont to Orange and returning same date
O. Stockton	September 18, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard

Name of Fireman [48]	Date Lost	Yard and/or Road Jobs Operated Without Fireman
O. Stockton	September 26, 1964	Claim earnings of Orange switcher #1—operates Beaumont to Orange returning same date
O. Stockton	October 3, 1964	1 yard day—yard assignment—7:59 am to 3:39 pm, Beaumont yard
O. Stockton	October 5, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Beaumont yard
O. Stockton	October 10, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
O. Stockton	October 12, 1964	Claim earnings Orange switcher #1—operates Beaumont to Orange and return same date
O. Stockton	October 30, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
O. Stockton	November 2, 1964	1 yard day—yard assignment—3 pm to 11 pm, Beaumont yard
O. Stockton	November 3, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, Beaumont yard
O. Stockton	November 6, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
O. Stockton	November 8, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
O. Stockton	November 9, 1964	1 yard day, yard assignment—7 am to 3 pm, Beaumont yard
O. Stockton	November 28, 1964	Earnings made Orange switcher #1—operates Beaumont to Orange and return same date
N. Stockton	June 14, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
N. Stockton	June 15, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
N. Stockton	June 20, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
N. Stockton	June 23, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
N. Stockton	June 27, 1964	Claim 1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
[49]		
N. Stockton	July 4, 1964	Claim 1 yard day—yard assignment, 6:30 am to 2:30 pm, Beaumont yard
N. Stockton	July 12, 1964	Claim 1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
N. Stockton	July 17, 1964	Claim 1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
N. Stockton	July 23, 1964	Claim 1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
N. Stockton	July 25, 1964	Claim 1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
N. Stockton	July 27, 1964	Claim 1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
N. Stockton	July 29, 1964	Claim 1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
N. Stockton	August 8, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
N. Stockton	August 28, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
N. Stockton	September 4, 1964	Claim earnings Orange switcher # 1—operates Beaumont to Orange returning same date
N. Stockton	September 5, 1964	Claim earnings Orange switcher # 1—operates Beaumont to Orange returning same date

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
N. Stockton	September 7, 1964	Claim 1 yard day—yard assignment—3 pm to 11 pm, Beaumont yard
N. Stockton	September 9, 1964	Claim 1 yard day—yard assignment—2:30 pm to 10:30 pm, Beaumont yard
N. Stockton	September 12, 1964	Claim earnings Orange switcher # 1—operates Beaumont to Orange returning same date
N. Stockton	September 13, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
N. Stockton	September 18, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
N. Stockton	September 26, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
[50]		
N. Stockton	October 3, 1964	Earnings Orange switcher # 1—operates Beaumont to Orange and return same date
N. Stockton	October 5, 1964	Earnings Orange switcher # 1—operates Beaumont to Orange and return same date
N. Stockton	October 9, 1964	Earnings Orange switcher # 1—operates Beaumont to Orange and return same date
N. Stockton	October 11, 1964	Train # 60 — local — Beaumont to Lake Charles, La.—Claim return trip train # 59—Lake Charles, La. to Beaumont Oct. 12, 1964
N. Stockton	October 13, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, Beaumont yard
N. Stockton	November 1, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard
N. Stockton	November 3, 1964	1 yard day—yard assignment—7:59 am to 3:59 pm, Beaumont yard
N. Stockton	November 7, 1964	1 yard day—yard assignment—7 am to 3 pm, Beaumont yard

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
N. Stockton	November 8, 1964	Train # 60 — local — Beaumont to Lake Charles, La.—Claim return trip train # 59—Lake Charles, La. to Beaumont of Nov. 9, 1964
M. H. Wedgeworth	May 15, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
M. H. Wedgeworth	May 22, 1964	1 yard day—yard assignment—6:30 am to 2:30 pm, Beaumont yard
[51]		
J. L. Albright	June 14, 1964	1 yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm
J. L. Albright	June 24, 1964	1 yard day—yard assignment # 115, Houston Terminal—11 pm to 7 am
J. L. Albright	June 27, 1964	1 yard day—yard assignment # 110, Houston Terminal—11:30 pm to 7:30 am
J. L. Albright	June 30, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
J. L. Albright	September 6, 1964	1 yard day—yard assignment # 52, Houston Terminal—7:59 am to 3:59 pm
J. L. Albright	September 14, 1964	1 yard day—yard assignment # 61, Houston Terminal (Hours of assignment not listed)
J. L. Albright	September 20, 1964	1 yard day—yard assignment # 60 Houston Terminal—7:59 am to 3:59 pm
J. L. Albright	October 7, 1964	1 yard day—yard assignment # 55, Houston Terminal—7:59 am to 3:59 pm
J. L. Albright	October 10, 1964	1 yard day—yard assignment # 61, Houston Terminal (Hours of assignment not listed)
J. L. Albright	October 12, 1964	1 yard day—yard assignment # 54, Houston Terminal, 7 am to 3 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
M. W. Arnt	June 30, 1964	1 yard day—yard assignment # 91, Houston Terminal—3:59 pm to 11:59 pm
M. W. Arnt	July 13, 1964	1 yard day—yard assignment # 53, Houston Terminal, 7:59 am to 3:59 pm
M. W. Arnt	July 20, 1964	1 yard day—yard assignment # 56, Houston Terminal—7:30 am to 3:30 pm
A. Bosshamer	May 12, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Galveston Texas yard
A. Bosshamer	May 24, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
A. Bosshamer	July 9, 1964	1 yard day—yard assignment # 57, Houston Terminal (Hours of assign- ment not listed)
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A. Bosshamer	July 11, 1964	1 yard day—yard assignment # 81, Houston Terminal—3:59 pm to 11:59 pm
A. Bosshamer	July 12, 1964	1 yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm
A. Bosshamer	July 20, 1964	1 yard day—yard assignment # 95, Houston Terminal—3:30 pm to 11:30 pm
A. Bosshamer	July 28, 1964	1 yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm
A. Bosshamer	August 9, 1964	1 yard day—yard assignment # 171, Houston Terminal—7:59 am to 3:59 pm
A. Bosshamer	September 9, 1964	1 yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
A. Bosshamer	September 20, 1964	1 yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm
S. M. Bailey	June 30, 1964	1 yard day—yard assignment # 90, Houston Terminal—3:59 pm to 11:59 pm
S. M. Bailey	July 3, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
S. M. Bailey	July 8, 1964	1 yard day—yard assignment # 150, Houston Terminal—3 pm to 11 pm
S. M. Bailey	July 11, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
S. M. Bailey	July 19, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
S. M. Bailey	July 22, 1964	1 yard day—yard assignment # 140, Houston Terminal—7 am to 3 pm
W. H. Brewer	May 29, 1964	1 yard day—yard assignment # 63, Houston Terminal (Hours of assignment not listed)
R. Brittian	July 6, 1964	1 yard day—yard assignment # 53, Houston Terminal—7:59 am to 3:59 pm
R. H. Bridges	August 9, 1964	1 yard day—yard assignment # 170, Houston Terminal—7 am to 3 pm
W. L. Clevenger	May 13, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Galveston yard
[53]		
W. L. Clevenger	June 27, 1964	1 yard day—yard assignment # 119, Houston Terminal, 11:59 pm to 7:59 am
W. L. Clevenger	June 28, 1964	1 yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
W. L. Clevenger	October 23, 1964	1 yard day—yard assignment # 57, Houston Terminal (Hours of assignment not listed)
W. L. Clevenger	October 28, 1964	Pool freight train # 48—Houston to Echo, Texas—claim return earnings Echo to Houston with engineer of outbound trip train # 48
W. L. Clevenger	November 2, 1964	1 yard day—yard assignment # 54, Houston Terminal, 7 am to 3 pm
W. L. Clevenger	November 7, 1964	1 yard day—yard assignment # 81, Houston Terminal—3:59 pm to 11:59 pm
W. L. Clevenger	November 10, 1964	Pool freight train # 48—Houston to Echo Texas—Claim return trip—Echo to Houston—made with engineer of outbound trip on train # 48
W. L. Clevenger	November 12, 1964	1 yard day—yard assignment # 91, Houston Terminal—3:59 pm to 11:59 pm
H. Coker	June 14, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
H. Coker	June 21, 1964	1 yard day—yard assignment # 52, Houston Terminal (Hours of assignment not listed)
H. Coker	June 28, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
H. Coker	July 7, 1964	1 yard day—yard assignment # 85, Houston Terminal—3:59 pm to 11:59 pm
H. Coker	July 9, 1964	1 yard day—yard assignment # 140, Houston Terminal—7 am to 3 pm
H. Coker	July 19, 1964	1 yard day—yard assignment # 171, Houston Terminal—7:59 am to 3:59 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
H. Coker	July 26, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
H. Coker	August 10, 1964	1 yard day—yard assignment # 56, Houston Terminal—7:30 am to 3:30 pm
[54]		
H. Coker	September 10, 1964	One yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm
H. Coker	October 8, 1964	1 yard day—yard assignment # 55, Houston Terminal—7:59 am to 3:59 pm
H. Coker	October 11, 1964	1 yard day—yard assignment # 81, Houston Terminal—3:59 pm to 11:59 pm
H. Coker	October 15, 1964	1 yard day—yard assignment # 55, Houston Terminal—7:59 am to 3:59 pm
H. Coker	October 27, 1964	Pool freight train # 244, Houston to Echo, Texas—claim return trip Echo to Houston with engineer of outbound trip train # 244
H. Coker	November 6, 1964	1 yard day—yard assignment # 91, Houston Terminal—3:59 pm to 11:59 pm
H. Coker	November 12, 1964	Pool freight train # 48—Houston to Echo, Texas—Claim return trip, Echo to Houston with engineer of outbound trip train # 48
H. O. Cline	June 29, 1964	1 yard day—yard assignment # 81, Houston Terminal—3:59 pm to 11:59 pm
H. O. Cline	July 2, 1964	1 yard day—yard assignment # 150, Houston Terminal—3 pm to 11 pm
H. O. Cline	July 4, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
H. O. Cline	July 5, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
H. O. Cline	July 7, 1964	1 yard day—yard assignment—11:59 pm to 7:55 am, Galveston yard
H. O. Cline	July 12, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Galveston yard
H. O. Cline	July 14, 1964	1 yard day—yard assignment # 91, Houston Terminal—3:59 pm to 11:59 pm
H. O. Cline	July 19, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
[55]		
H. O. Cline	July 22, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
H. O. Cline	July 26, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Galveston yard
H. O. Cline	July 30, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
M. C. Driscoll	September 21, 1964	1 yard day—yard assignment # 56, Houston Terminal—7:30 am to 3:30 pm
H. B. Duncan	November 8, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
E. King	May 17, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Galveston yard
E. King	June 28, 1964	1 yard day—yard assignment # 81, Houston Terminal—3:59 pm to 11:59 pm
E. King	June 29, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
E. King	July 1, 1964	1 yard day—yard assignment #88, Houston Terminal—3:59 pm to 11:59 pm
E. King	July 4, 1964	1 yard day—yard assignment #55, Houston Terminal—7:59 am to 3:59 pm
C. F. Lastropeu	November 6, 1964	Pool freight train #48, Houston to Echo, Texas—Claim return trip, Echo to Houston, with engineer of outbound trip train #48
V. A. Eden	August 9, 1964	1 yard day—yard assignment #60, Houston Terminal—7:59 am to 3:59 pm
L. V. Gauthreaux	July 28, 1964	1 yard day—yard assignment #58, Houston Terminal—7:59 am to 3:59 pm
L. V. Gauthreaux	August 2, 1964	1 yard day—yard assignment #170, Houston Terminal—7 am to 3 pm
B. E. Moseley	May 20, 1964	1 yard day—yard assignment #63, Houston Terminal (Hours of assignment not listed)
B. E. Moseley	July 3, 1964	1 yard day—yard assignment #113, Houston Terminal (Hours of assignment not listed)
[56]		
B. E. Moseley	July 20, 1964	1 yard day—yard assignment #58, Houston Terminal—7:59 am to 3:59 pm
B. E. Moseley	September 16, 1964	1 yard day—yard assignment #69, Houston Terminal—7:59 am to 3:59 pm
B. E. Moseley	September 23, 1964	1 yard day—yard assignment #64, Houston Terminal—7:59 am to 3:59 pm
B. E. Moseley	October 1, 1964	1 yard day—yard assignment #95, Houston Terminal—3:30 pm to 11:30 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
B. E. Moseley	October 4, 1964	1 yard day—yard assignment # 60, Houston Terminal—7:59 am to 3:59 pm
B. E. Moseley	October 7, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
B. E. Moseley	October 11, 1964	1 yard day—yard assignment # 60, Houston Terminal—7:59 am to 3:59 pm
B. E. Moseley	October 23, 1964	Pool freight train # 244—Houston to Echo, Texas—Claim return trip, Echo to Houston, with engineer of outbound trip train # 244
B. E. Moseley	October 25, 1964	Pool freight train # 242, Houston to Echo, Texas—Claim return trip, Echo to Houston with engineer of outbound trip train # 242
B. E. Moseley	November 7, 1964	1 yard day—yard assignment # 91, Houston Terminal—3:59 pm to 11:59 pm
B. E. Moseley	November 10, 1964	1 yard day—yard assignment # 91, Houston Terminal—3:59 pm to 11:59 pm
F. B. Moseley	June 23, 1964	1 yard day—yard assignment # 110, Houston Terminal—11:30 pm to 7:30 am
F. B. Moseley	July 3, 1964	1 yard day—yard assignment # 85, Houston Terminal—3:59 pm to 11:59 pm
F. B. Moseley	July 8, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
F. B. Moseley	July 12, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
F. B. Moseley	July 14, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
[57]		
F. B. Moseley	July 29, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
W. J. Leatherwood	June 30, 1964	1 yard day—yard assignment # 88, Houston Terminal—3:59 pm to 11:59 pm
W. J. Leatherwood	July 5, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
W. J. Leatherwood	July 11, 1964	1 yard day—yard assignment # 170, Houston Terminal—7 am to 3 pm
W. J. Leatherwood	July 12, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
W. J. Leatherwood	July 19, 1964	1 yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm
W. M. Pendergrass	May 19, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Galveston yard
W. M. Pendergrass	June 28, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
W. M. Pendergrass	July 3, 1964	1 yard day—yard assignment # 150, Houston Terminal—3 pm to 11 pm
W. M. Pendergrass	July 8, 1964	1 yard day—yard assignment # 88, Houston Terminal—3:59 pm to 11:59 pm
W. M. Pendergrass	July 11, 1964	1 yard day—yard assignment # 55, Houston Terminal—7:59 am to 3:59 pm
W. M. Pendergrass	July 13, 1964	1 yard day—yard assignment # 56, Houston Terminal—7:30 am to 3:30 pm
W. M. Pendergrass	July 19, 1964	1 yard day—yard assignment # 52, Houston Terminal (Hours of assign- ment not listed)

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
A. Riddle	June 29, 1964	1 yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm
A. Riddle	July 20, 1964	1 yard day—yard assignment # 52, Houston Terminal (Hours of assignment not listed)
A. Riddle	July 29, 1964	1 yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm
A. Riddle	August 9, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
[58]		
A. Riddle	November 4, 1964	1 yard day—yard assignment # 66, Houston Terminal—7:59 am to 3:59 pm
A. Riddle	November 6, 1964	1 yard day—yard assignment # 57, Houston Terminal (Hours of assignment not listed)
A. Riddle	November 11, 1964	Pool freight train # 244—Houston to Echo, Texas—Claim return trip, Echo to Houston with engineer of outbound trip train # 244
A. Riddle	November 13, 1964	1 yard day—yard assignment # 95, Houston Terminal—3:30 pm to 11:30 pm
R. H. Sweetser	June 28, 1964	1 yard day—yard assignment # 60, Houston Terminal—7:59 am to 3:59 pm
R. H. Sweetser	June 29, 1964	1 yard day—yard assignment # 60, Houston Terminal—7:59 am to 3:59 pm
R. H. Sweetser	July 1, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
R. H. Sweetser	July 4, 1964	1 yard day—yard assignment # 52, Houston Terminal (Hours of assignment not listed)

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
R. H. Sweetser	July 7, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
R. H. Sweetser	July 9, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
M. C. Schwartz	September 22, 1964	1 yard day—yard assignment # 69, Houston Terminal—7:59 am to 3:59 pm
M. C. Schwartz	September 24, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Galveston yard
E. R. Staha	November 8, 1964	1 yard day—yard assignment # 81, Houston Terminal—3:59 pm to 11:59 pm
E. R. Staha	November 11, 1964	Pool freight train # 48, Houston to Echo, Texas—Claim return trip, Echo to Houston with engineer of outbound trip train # 48
C. M. Woods	June 29, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
C. M. Woods	September 6, 1964	1 yard day—yard assignment # 60, Houston Terminal—7:59 am to 3:59 pm
[59]		
C. M. Woods	October 5, 1964	1 yard day—yard assignment # 54, Houston Terminal—7 am to 3 pm
C. M. Woods	October 8, 1964	1 yard day—yard assignment # 57, Houston Terminal (hours of assignment not listed)
C. M. Woods	October 13, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm
C. M. Woods	November 13, 1964	1 yard day—yard assignment # 64, Houston Terminal—7:59 am to 3:59 pm

Name of Fireman	Date Lost	Yard and/or Road Jobs Operated Without Fireman
V. W. Woods	June 29, 1964	1 yard day—yard assignment # 52, Houston Terminal (hours of assignment not listed)
V. W. Woods	July 2, 1964	1 yard day—yard assignment # 58, Houston Terminal—7:59 am to 3:59 pm
V. W. Woods	July 8, 1964	1 yard day—yard assignment # 140, 7 am to 3 pm, Houston Terminal
V. W. Woods	July 15, 1964	1 yard day—yard assignment # 57, Houston Terminal (hours of assignment not listed)
V. W. Woods	July 19, 1964	1 yard day—yard assignment # 60, 7:59 am to 3:59 pm, Houston Terminal
V. W. Woods	July 20, 1964	1 yard day—yard assignment # 64, 7:59 am to 3:59 pm, Houston Terminal
V. W. Woods	September 6, 1964	1 yard day—yard assignment # 69, 7:59 am to 3:59 pm, Houston Terminal
V. W. Woods	September 11, 1964	1 yard day—yard assignment—11:59 pm to 7:59 am, Galveston yard
V. W. Woods	September 23, 1964	1 yard day—yard assignment # 69, 7:59 am to 3:59 pm, Houston Terminal
V. W. Woods	October 3, 1964	1 yard day—yard assignment # 119, Houston Terminal—11:59 pm to 7:59 am
V. W. Woods	October 9, 1964	1 yard day—yard assignment # 55, 7:59 am to 3:59 pm, Houston Terminal
V. W. Woods	October 11, 1964	1 yard day—yard assignment # 86, 3:59 pm to 11:59 pm, Houston Terminal
V. W. Woods	November 8, 1964	Pool freight train # 48, Houston to Echo Texas—Claim return trip—Echo to Houston with engineer on return trip of train # 48

Name of Fireman [60]	Date Lost	Yard and/or Road Jobs Operated Without Fireman
R. Wilson	July 2, 1964	1 yard day—yard assignment #89, Houston Terminal—3 pm to 11 pm
R. Wilson	July 8, 1964	1 yard day—yard assignment #85, Houston Terminal—3:59 pm to 11:59 pm
R. Wilson	November 12, 1964	1 yard day—yard assignment #95, 3:30 pm to 11:30 pm—Houston Terminal
R. Wilson	November 9, 1964	1 yard day—yard assignment #113, Houston Terminal (Hours of assignment not listed)
G. R. Watts	September 7, 1964	1 yard day—yard assignment #54, Houston Terminal—7 am to 3 pm
G. R. Watts	September 24, 1964	1 yard day—yard assignment #69, Houston Terminal—7:59 am to 3:59 pm
G. R. Watts	October 7, 1964	1 yard day—yard assignment #57, Houston Terminal (Hours of assignment not listed)
G. R. Watts	October 9, 1964	1 yard day—yard assignment #86, Houston Terminal—3:59 pm to 11:59 pm
G. R. Watts	October 13, 1964	1 yard day—yard assignment #55, Houston Terminal—7:59 am to 3:59 pm
G. R. Watts	October 22, 1964	1 yard day—yard assignment #57, Houston Terminal (Hours of assignment not listed)
G. R. Watts	November 9, 1964	1 yard day—yard assignment #66, Houston Terminal—7:59 am to 3:59 pm
G. R. Watts	November 12, 1964	Pool freight train #244, Houston to Echo, Texas Claim return trip—Echo to Houston with engineer on outbound of train #244
E. M. Rosanky	September 22, 1964	1 yard day—yard assignment #64, Houston Terminal—7:59 am to 3:59 pm

[61] (8) The refusal by Southern Pacific to call C(7) firemen from the extra lists to work when they are available and ready to work, while blanked assignments in road freight service and in yard switching service are being operated without a fireman being a member of the crew in such service, is contrary to the provisions of Part C(7), Part D(2) and Part D(3) of the Award, and is also inconsistent with the Arbitration Board's interpretation of the Award as set forth in the Board's answers to BLF&E Question No. 9, issued May 17, 1964, and in its answers to BLF&E Questions 60, 76, 79, 30, 27, 29 and 114, issued September 16, 1964.

(9) BLF&E Question No. 9, and the Board's answer, read as follows:

"Question No. 9: May the carrier consider as a blankable job and refuse employment of a helper-fireman on extra assignments in road freight and yard service, including service on light engine movements, messenger service and on self-propelled machines where presently required?"

Answer: The carrier may not refuse employment of a fireman (helper) in extra road freight and extra yard service including extra light engine movements, messenger service and self-propelled machines (if any self-propelled machines are operated on which firemen (helpers) are presently required) if there are employees who are available for service where rights to continued employment as firemen (helpers) are protected under Section II, Parts C and D of this Award. If no such employees are available, however, a new employee need not be hired."

(10) BLF&E Question No. 60, and the Board's answer, read as follows:

"Question No. 60: (a) May the carrier arbitrarily refuse to allow a C-6 or C-7 helper-fireman to exercise his seniority in placing himself upon a yard assignment, using a locomotive equipped with a deadman control?"

(b) May the carrier refuse to call a helper- [62] fireman from the extra list to cover a vacancy on a yard assignment, using an engine equipped with a deadman control, when said helpers-firemen are available and may lose one or more day's work through carriers' operation of such assignments without a helper-fireman?

Answer: (a) If a yard assignment with a deadman control on the engine is listed as one on which a C-6 or C-7 fireman-helper may exercise his seniority, he is privileged to do so.

(b) The carrier may not refuse to call a C-6 or C-7 fireman-helper to fill a vacancy on a blankable yard assignment where the engine is equipped with a deadman control if the refusal to so call would result in the C-6 or C-7 fireman-helper losing a day or more of work."

(11) BLF&E Question No. 76, and the Board's answer, read as follows:

"Question No. 76: Is it the intent of the Award to allow a carrier to operate a "blanked" or "blankable" assignment without a helper-fireman, when helpers-firemen are available on the extra board and may lose one or more day's work if not called to perform service?

Answer: The principle expressed in the Board's answer to BLF&E Question No. 60(b) is applicable and controlling."

(12) BLF&E Question No. 79, and the Board's answer, read as follows:

"Question No. 79: May the carrier hold a C-7 or C-6 helper-fireman on the extra board to fill a vacancy on a non-blankable assignment and, in turn, operate an extra assignment without a fireman?

Answer: The carrier may hold a C-6 or C-7 fireman (helper) on the extra board to fill a vacancy on a non-

blankable assignment, and, in turn, operate an extra assignment without a fireman (helper), unless such action would cause the fireman (helper) to lose a day or more of work."

[63] (13) BLF&E Question No. 30, and the Board's answer, read as follows:

"Question No. 30: May the carrier allow a blankable assignment to work without a helper-fireman holding the first-out extra fireman off a blankable vacancy to cover a vetoed vacancy with a later starting time and in turn violate rules contained in a majority of individual agreements?"

Answer: This question is controlled by the Board's answer to BLF&E question No. 79 above."

(14) The Board's answers to BLF&E Questions Nos. 79 and 30 were augmented by an understanding among the members of the Board which was reported to the Brotherhood's General Chairmen by the Brotherhood's President as follows:

"September 18, 1964.

"ALL GENERAL CHAIRMEN IN THE UNITED STATES,
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN.

"Dear Sirs and Brothers:—

"This is being written with reference to understanding reached during the session of reconvened Arbitration Board No. 282, held in Boston, Massachusetts, on September 16, 1964, that I was to write Brotherhood of Locomotive Firemen and Enginemen General Chairmen setting forth the manner in which we agreed the Answers to BLF&E Questions Nos. 79 and 30 would be applied.

In event a fireman is held off an earlier vacancy in the circumstances cited in these Questions, and he is not used on a later assignment on that day, he is entitled not only to a day's pay, but he would be entitled to be compensated in an amount no less than

he would have earned on the assignment from which he was held.

"A copy of this communication is being forwarded to Members of the Arbitration Board inasmuch as my notes indicate Mr. Wolfe will confirm the understanding set forth herein.

"Fraternally yours,

s/H. E. GILBERT.

[64] "cc: MEMBERS OF ARBITRATION BOARD No. 282
ALL GRAND LODGE OFFICERS
MEMBERS BOARD OF DIRECTORS
FIELD REPRESENTATIVES
GENERAL ORGANIZERS
STATE LEGISLATIVE AND EDUCATION CHAIRMEN"

(15) BLF&E Questions No. 27 and No. 29, and the Board's answers, read as follows:

Question No. 27: May the carrier arbitrarily refuse to call a helper-fireman, covered under Paragraphs C-6 or C-7 and not assign to the extra list, to cover a blankable vacancy when the extra list is exhausted?

Question No. 29: May the carrier refuse to call a helper-fireman from the extra list, or a helper-fireman covered under Paragraphs C-6 or C-7 in emergency, to fill a blankable vacancy when required to pay time and one-half?

Answer: The answer to these two questions is the following: Regularly assigned firemen (helpers) in C-6 and C-7 categories need not be called to fill blankable vacancies when the extra list is exhausted. The rights and obligations of a carrier with respect to the calling of a fireman (helper) from the extra list to fill a blankable vacancy are the same whether or not time and one-half would have to be paid."

(16) BLF&E Question No. 114, and the Board's answer, read as follows:

"Question No. 114: On the Michigan Central System there is a daily adjustment of the extra board.

In view of the interpretation as rendered in BLF&E Question No. 43, management has submitted a list of assignments upon which helpers-firemen may work, which is adjusted daily to the number of helpers-firemen on the firemen's seniority roster, but on the average an inequity of 40% exists between the total number of assignments on said list working on a single day and helpers-firemen in service.

Because of such adjustment is the carrier required to furnish assignments upon which helpers-firemen may work each day, equal to the number of helpers-firemen available each day?

[65] Answer: C-6 and C-7 firemen (helpers) who are on an extra list and available for work must be given an opportunity to work on such assignments as are operated on any given day. This answer applies to the circumstances referred to in the question, which involve a daily adjustment of the extra board."

(17) The Board's Award, and the Board's interpretations of its Award, entitle C(7) firemen to be called to work in accordance with the rules and practices as they existed prior to January 25, 1964, whenever blanked jobs in regular yard switching service or regular road freight service, or jobs in extra yard service or extra road freight service, are being operated without a fireman being a member of the crew and C(7) firemen are available and desire to work on such assignments, but Southern Pacific has been violating the rights of C(7) firemen in this respect, as above set forth, and is continuing to violate such rights as of the time this affidavit is executed.

PART II

Southern Pacific Disregarded the Procedure Prescribed by The Award in Offering Comparable Jobs to C(6) Firemen, as a Condition Precedent to Terminating Their Employment Relationship with the Carrier.

(1) Part C(6) of the Award provides that, with the exception of the firemen referred to in Parts C(2), C(3) and C(4) of the Award, all firemen having less than 10 years' seniority on January 25, 1964, would retain their employment rights "unless and until offered by the Carrier another comparable job."

(2) Part C(6) prescribed the procedure to be followed by the carrier in the event it desired to offer C(6) firemen comparable jobs in other crafts, and thereafter terminate the em- [66] ployment of those firemen who failed to accept the comparable jobs, as follows:

"Such offers of jobs shall be posted and made available to all qualified firemen (helpers) in order of seniority in the seniority district in which the job offered is located. If, within seven days after notice is posted, no senior man elects to take such offered job, *the most junior man then on the fireman (Helper) roster in that seniority district must*, within three days from receipt of written notice, accept the job or all of his employment and seniority rights and relations shall be terminated and, in that event, he shall be entitled to one-half the severance allowance provided for in paragraph C(3) of this Award. If such junior fireman (helper) shall fail to accept such job and thereby terminates his employment as herein provided, *the next most junior fireman (helper) on that same roster must accept the job within three days from receipt of written notice or forfeit all of his employment and seniority rights and relations with the allowance provided for above. In each case of refusal to accept such job offer the next most junior fireman (helper) shall be required to accept, as provided above, or forfeit his employment and seniority rights and relations with,*

in each case, the allowance provided for above, until there are no fireman (helpers) with less than ten years' seniority remaining on the seniority roster for the seniority district in which the job offer is located." (Emphasis ours)

(3) On May 11, 1964, Southern Pacific posted notices of the "comparable jobs" available to C(6) firemen on each of the six seniority districts comprising the carrier's Texas and Louisiana lines.

(4) The following twelve C(6) firemen bid on and accepted comparable job offers:

D. N. Rush, Bloomington, Texas;
J. B. Jackson, Houston, Texas;
D. H. Kruse, Houston, Texas;
B. J. Short, Dallas, Texas;
B. J. Manley, Dallas, Texas;
[67] L. L. Henderson, Houston, Texas;
R. J. Schwartz, Ennis, Texas;
W. P. Lewter, El Paso, Texas;
J. B. Fitzgerald, Opelousas, Louisiana;
M. Holloway, Houston, Texas;
F. S. Breazeale, Houston, Texas;
R. D. Lounsberry, Guyedon, Louisiana.

(5) From May 26th to 29th, 1964, Southern Pacific sent to each of the twelve firemen referred to in paragraph 4, *supra*, a letter informing each fireman that the Arbitration Board had, on May 17, 1964, interpreted Part C(6) of the Award in a manner which provided a more liberal severance allowance in the event C(6) firemen preferred not to accept comparable jobs, and that each of the twelve employees would have until June 15, 1964 to cancel their bids for comparable jobs if they desired to do so. Between June 1st and June 15th, 1964, the twelve C(6) firemen, with the exception of R. D. Lounsberry, elected to cancel their bids on comparable jobs and notified Southern Pacific accordingly.

(6) On May 20 and May 21, 1964, Southern Pacific notified every C(6) fireman then employed as a fireman on

the six seniority districts in the States of Texas and Louisiana that senior firemen had failed to bid on the "comparable jobs" that were posted on May 11, 1964, and thereafter, pursuant to paragraph C(6) of the Arbitration Award, and that each fireman in receipt of such letter must, within three days, accept one of the jobs offered or his employment relationship with Southern Pacific would automatically terminate at the end of three days.

[68] (7) On May 25, 1964, Southern Pacific notified seventy-three firemen then employed on the six seniority districts in the States of Texas and Louisiana that "your employment, seniority rights and relations are terminated and your name is being removed from the seniority roster effective this date."

(8) In a letter dated May 27, 1964, from the Brotherhood's Acting General Chairman, J. R. Lewis, to Southern Pacific's Manager of Personnel for its Texas and Louisiana lines, Mr. L. C. Albert, the Brotherhood pointed out that the carrier was violating the procedure prescribed by Part C(6) of the Award in bringing about the termination of the C(6) firemen's employment relationships with the carrier.

(9) Seventy-three of the C(6) firemen employed on Southern Pacific's lines in the States of Texas and Louisiana were simultaneously severed from their employment as of May 25, 1964, and the eleven C(6) firemen who elected to cancel their bids for comparable jobs were severed from their employment between June 1st and June 15, 1964. The firemen whose employment was thus terminated were the following:

Houston and Texas Central Seniority District

Name	Home Location	Seniority Date
Richards, C. W.	Fort Worth, Texas	10-30-61
Grimes, C. R.	Fort Worth, Texas	10-28-61
Hollingshead, T. H.	Hearne, Texas	7-16-59
Hedrick, J. E.	Corsicana, Texas	7-16-59
Short, B. J.	Dallas, Texas	7-10-59
Mullen, J. M.	Houston, Texas	7-3-59
Reed, H. D.	Austin, Texas	6-22-59
Jones, F. E.	Hearne, Texas	6-18-59
Manley, B. J.	Dallas, Texas	6-10-59

Name	Home Location	Seniority Date
Heartgrove, J. E.	Austin, Texas	7-12-57
Henderson, L. L.	Houston, Texas	7-8-57
Head, G. K.	Ennis, Texas	7-1-57
Story, G. E.	Dallas, Texas	6-3-57
[69]		
Schwarz, R. J.	Ennis, Texas	5-31-57
Featherstone, J. W.	Ennis, Texas	1-3-57
Bland, A. L.	Fort Worth, Texas	7-14-56
Tay, J. A.	Ennis, Texas	6-20-56
Svehlak, S. L.	Dallas, Texas	6-28-55
Wilhoite, J. W.	Ennis, Texas	6-23-55
Baker, B. J. Jr.	Ennis, Texas	6-16-55

El Paso—Del Rio Seniority District

Walker, H. C.	El Paso, Texas	7-18-61
Lewter, W. P.	El Paso, Texas	7-18-61
Brown, G. A.	Del Rio, Texas	7-1-59
Bonnell, F. H.	Sanderson, Texas	6-16-59
Grelle, A. L.	Sanderson, Texas	6-9-59
Shurley, K. L.	Sanderson, Texas	6-6-59
Mills, D. E.	Del Rio, Texas	6-6-59
Meyer, R. L.	El Paso, Texas	6-2-59
Pipes, H. H.	San Antonio, Texas	8-22-58
Farley, A. N. Jr.	Sanderson, Texas	2-20-58
Robinson, H. G.	Sanderson, Texas	7-20-56
O'Rourke, W. O.	El Paso, Texas	7-9-56
Allen, O.	El Paso, Texas	6-6-56
Carroll, C. D.	El Paso, Texas	6-1-56
Dyer, R. L.	Del Rio, Texas	6-22-55
Huffman, C. H.	El Paso, Texas	5-27-55
Darnall, M.	El Paso, Texas	7-22-54
Beare, G.	El Paso, Texas	7-22-54

Houston—Victoria—Del Rio Seniority District

Rush, D. N.	Bloomington, Texas	8-31-61
Caldwell, T. W.	San Antonio, Texas	7-18-61
Jackson, J. B.	Houston, Texas	7-13-61
Slaughter, J. M.	San Antonio, Texas	7-27-59
Czaplinski, C. A.	San Antonio, Texas	7-7-61
Frank, R. W.	Yoakum, Texas	7-17-59
Kosub, O.	San Antonio, Texas	7-10-59
DeLong, A. H.	San Antonio, Texas	6-26-59
Hartley, J. W. Jr.	San Antonio, Texas	6-7-59
Howard, E. L.	San Antonio, Texas	6-5-59
Mainz, J. G.	San Antonio, Texas	6-3-59
Fontenot, R. J.	Houston, Texas	5-23-59

Name	Home Location	Seniority Date
Trotti, J. D.	San Antonio, Texas	5-12-58
Lohrke, J. W.	San Antonio, Texas	8-20-57
Day, C. R.	San Antonio, Texas	8-20-57
Kruse, D. H.	Houston, Texas	8-3-57
Nehr, J. H.	Houston, Texas	7-19-56
Havel, A. A.	Houston, Texas	3-7-56
Corbett, M. W.	San Antonio, Texas	2-3-56
Jackson, W. E.	San Antonio, Texas	2-3-56

[70] Morgan, Louisiana & Texas Seniority District

Boudreaus, D. J.	Lafayette, Louisiana	6-16-61
Gurley, R. M.	Avondale, Louisiana	6-13-61
Butcher, J. D.	Avondale, Louisiana	8-27-57
McKnight, J. L. Jr.	Avondale, Louisiana	5-24-56
Vidrine, F. D.	New Iberia, Louisiana	1-30-56
Lanclos, M. J.	Avondale, Louisiana	1-24-56
Conque, G. A.	Avondale, Louisiana	1-16-56
Greel, R. C.	New Iberia, Louisiana	11-11-55
Brown, A. L.	Avondale, Louisiana	10-14-55
Martin, L. F.	Lafayette, Louisiana	8-19-55
Huval, J. H.	Avondale, Louisiana	6-26-55
Price, R. B. Jr.	Lafayette, Louisiana	6-20-55
LeBlanc, P. E.	Avondale, Louisiana	6-3-55
Price, D. H.	Gretna, Louisiana	5-3-55
Sills, H. C.	Belle Chare, Louisiana	4-29-55
Holfield, B. D.	New Orleans, Louisiana	1-24-55
Delahoussaye, H. E.	Baldwin, Louisiana	11-18-54

Houston—Lafayette Seniority District

Vige, S. A.	Opelousas, Louisiana	7-1-57
Trosclair, R. K.	Opelousas, Louisiana	7-30-56
Powell, V. R.	Carriere, Mississippi	7-19-56
Henry, L. A.	Lake Charles, Louisiana	6-9-56
Fitzgerald, J. B.	Opelousas, Louisiana	6-5-56
Brasseaux, L.	Lake Charles, Louisiana	5-22-56
Baudoin, H. S.	Lake Charles, Louisiana	5-17-56
Combs, E. R.	Lafayette, Louisiana	6-20-55
Holloway, M.	Houston, Texas	10-1-54
Brenzeale, F. S.	Houston, Texas	8-6-54

[71] (10) The authority granted by Part C(6) of the Award to carriers to terminate the employment of C(6) firemen, after a "comparable job" had been offered to each C(6) fireman in accordance with the procedure clearly prescribed by Part C(6) of the Award, has been the subject of several interpretations by the Arbitration Board. On

May 23, 1964, the Board answered the Carriers' Question No. 1, based upon Part C(6) of the Award, as follows:

"Question No. 1: Part C(6) provides, in part—"If, within seven days after notice is posted, no senior man elects to take such offered job, the most junior man on the fireman (helper) roster in that seniority district, must, within THREE days from receipt of written notice, accept the job or all of his employment and seniority rights and relations shall be terminated and, in that event, he shall be entitled to one-half the severance allowance provided for in paragraph C(3) of this Award."

It is the carriers' understanding that "one-half the severance allowance provided for in paragraph C(3) of this Award" means one-half of a maximum of \$4,800.00 or a maximum of \$2,400.00. Is the carriers' understanding correct?

Answer: The carriers' understanding is not correct. The employees referred to in Section II, Part C (6), are entitled to a severance allowance equal to one-half of 100 per cent of their earnings during the 24 calendar months preceding the effective date of the Award." (Emphasis ours)

(11) On May 8, 1964, BLF&E Question No. 24 was submitted to the Board; on May 20, 1964, BLF&E's Question No. 45 was submitted to the Board, and on June 30, 1964, Question No. 70 was submitted to the Board. These BLF&E Questions were answered on September 16, 1964, by the Board as follows:

[72] *"Question No. 24: May the carrier eliminate more than one (1) helper-fireman from a seniority roster when making one (1) comparable job offer?*

Answer: If a carrier's offer of a comparable job has been rejected, it may then offer such job to the junior employee on the fireman's roster. If he refuses, the carrier can sever him with proper payment and offer the job to the next most junior employee and so on

through the list until either someone takes the job or the list of C-6 men is exhausted."

"Question No. 45: Can a carrier post "comparable jobs" in multiples of two or more for the purpose of requiring junior employees under C-6 to make their selections simultaneously and for the purpose of eliminating junior firemen-helpers simultaneously?"

Answer: Yes. A carrier may post "comparable jobs" in multiples of two or more. If senior employees do not elect to take such offered jobs, these jobs will be offered first to the most junior man then on the fireman (helper) roster, and after he has made his election, such jobs will be offered to the next most junior man. This process shall be repeated until the proffered jobs have been filled or the C-6 roster of firemen (helpers) has been exhausted."

"Question No. 70: May a carrier circumvent the provisions of Paragraph C-6 of the Award by offering severance allowance without the offer of a comparable job and in disregard of proper seniority order?"

Answer: An offer of a severance allowance to a C-6 fireman without the offer of a comparable job and in disregard of seniority order is not authorized by the Board's Award."

(12) After posting notices of comparable jobs available on each seniority district in order that the senior C(6) firemen might bid upon and accept such jobs, Southern Pacific then offered the available comparable jobs to C(6) firemen in groups on each [73] seniority district, instead of first offering the comparable job or jobs to the junior fireman on the seniority district on which the jobs were available, and after three days offering the remaining jobs available to the next most junior firemen, and so on, as is clearly prescribed by Part C(6) of the Award and the interpretations of C(6) as made by the Board.

(13) The employment contracts of eighty-five C(6) firemen were thus improperly terminated by Southern Pacific.

PART III

Southern Pacific, Claiming that Part A(1) and Part B(5) of the Arbitration Award Authorizes It to Disregard the Long-Established Interpretations of the Mileage Limitation Rules Contained in the Firemen's Existing Agreements and the Established Practices Thereunder, Has Intentionally Misapplied the Mileage Rules in a Manner that Will Obviously Result in the Rapid and Certain Removal of Substantially All C(7) Firemen from All Freight Pool Jobs on Southern Pacific's Texas and Louisiana Lines, With the Exception of the Vetoed Jobs, Thereby Compelling Senior C(7) Firemen to Take Jobs Operating Yard Switching Locomotives at Substantially Lower Pay and Involving More Onerous Working Conditions and Away-from-Home Employment.

(1) Southern Pacific has for many years operated its principal freight trains by maintaining at certain terminals on each seniority district groups of firemen known as "firemen's freight pool lists", in accordance with the rules contained in the agreements between Southern Pacific and the Brotherhood. Such [74] freight pool lists have been maintained on the six seniority districts comprising the Texas and Louisiana lines of the Southern Pacific and are identified as follows:

Houston and Texas Central Seniority District

Freight Pool Lists	Average Number of Firemen Employed in Pool During May 21-30, 1964
At Ennis Texas, operating Ennis to Fort Worth & return; Ennis to Dennison & return; and Ennis to Hearne & return	18 Firemen
At Houston, Texas, operating Houston to Hearne & return	4 Firemen
At San Antonio, Texas, operating San Antonio to Hearne & return	8 Firemen

El Paso—Del Rio Seniority District

Freight Pool Lists	Average Number of Firemen Employed in Pool During May 21-30, 1964
At El Paso, Texas, operating El Paso to Valentine & return	14 Firemen
At Sanderson, Texas, operating Sanderson to Valentine & return	16 Firemen
At Del Rio, Texas, operating Del Rio to Sanderson & return	14 Firemen

Houston, East & West Texas Seniority District

At Houston, Texas, operating Houston to Lufkin & return	3 Firemen
At Lufkin, Texas, operating Lufkin to Shreveport, Louisiana and return	4 Firemen

Houston—Lafayette Seniority District

At Houston, Texas, operating Houston to Echo, Texas & return	6 Firemen
At Houston, Texas, operating Houston to Galveston & return	2 Firemen

[75] Houston—Victoria—Del Rio Seniority District

At San Antonio, Texas, operating San Antonio to Del Rio & return	18 Firemen
At San Antonio, Texas operating San Antonio to Glidden & return	4 Firemen
At San Antonio, Texas, operating San Antonio to Hearne & return	7 Firemen
At San Antonio, Texas, operating San Antonio to Alice, Texas & return	3 Firemen
At Houston, Texas, operating Houston to Glidden and/or return	8 Firemen

Morgan, Louisiana and Texas Seniority District

At Avondale, operating Avondale (New Orleans), Louisiana to Lafayette, Louisiana & return	8 Firemen
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(2) With the exception of the firemen's assignments on the few passenger trains operated by Southern Pacific on its Texas and Louisiana lines, jobs in freight pool service were and are the preferred and best paying jobs available to firemen employed on Southern Pacific, and such jobs were, prior to June, 1964, regularly held by the senior firemen on each seniority district. Subsequent to the issuance of the Arbitration Award, all freight pool jobs have generally been held by the firemen classified as C(7) firemen pursuant to the terms of the Award.

[76] (3) The schedule rules that were in effect on the day preceding the effective date of the Arbitration Award provide that a sufficient number of firemen will be assigned to each freight pool list to enable the firemen comprising the list to earn between 3200 and 3800 miles per month. Similar schedule rules containing the same mileage limitations are contained in the collective agreements governing the employment of engineers on the Southern Pacific Railroad. The basic mileage rule in the firemen's agreements reads as follows:

"A. In the regulation of assigned passenger service, a sufficient number of firemen will be assigned to keep the mileage or equivalent thereof within the limitations of 4,000 and 4,800 miles per month, in assigned service paying freight rates, a sufficient number of firemen will be assigned to keep the mileage or equivalent thereof within the limitations of 3,200 and 3,800 miles per month. To keep within the mileage limitations set forth in this section, additional firemen may be added or swing firemen used to relieve the regular firemen on specified days. If regulation cannot be made as provided herein, firemen will be required to lay off so that the equivalent of 4,800 miles in passenger or 3,800 miles in the other assigned service, will not be exceeded."

(4) The firemen's schedule rules further provide that for the purpose of keeping the mileage earned by the firemen assigned to a freight pool list averaging between 3200 and 3800 miles per month per man, each month will be divided into three checking periods, to wit, from the 1st to

the 10th day of the month, from the 11th to 20th day of the month, and from the 21st to the 30th day of the month. The rules provide that the total number of miles accumulated by [77] the employees regularly assigned to a freight pool list between the 1st and the 10th days of the month will, on the 13th day of the month, be multiplied by three and the resulting number will be divided by the number of firemen regularly assigned to the freight pool list for the purpose of determining whether the men in the pool are earning mileage at an average rate of between 3200 to 3800 miles per month. If the average miles earned by the men in the pool during the 1st-to-10th day checking period are at a rate in excess of 3800 miles per month per man, then one or more jobs must be bulletined for firemen to bid upon and the fireman or firemen having the greatest seniority among those bidding on the pool jobs shall be added to the freight pool list, the number of additional men to be added to the pool being determined by the number of men that will likely be required to maintain the average mileage during the next mileage checking period between 3200 and 3800 miles per month.

(5) The rule provides that if at the end of the 1st-to-10th day checking period the average mileage earned by the firemen assigned to a freight pool list is at a rate less than 3200 miles per month, then one or more firemen shall be removed from the list, so that the remaining men on the pool list will likely earn mileage during the next checking period at a rate between 3200 and 3800 miles per month. The fireman or firemen thus removed from the freight pool list for the purpose of adjusting the mileage shall be those firemen having the least seniority. A similar adjustment of the mileage earned by the firemen regularly assigned to freight pool [78] lists takes place on the 23rd of the month, based upon the mileage accumulated between the 11th and 20th day of the month, and a third adjustment takes place on the 3rd day of the following month based upon the mileage accumulated between the 21st and 30th days of the month. The schedule rule prescribing the foregoing procedure reads as follows:

“(H) For the purpose of adjusting lists, it is agreed a mileage check will be made on ten-day periods; namely

1st-10th, 11th-20th, and 21st-30th of each calendar month. Adjustments will be made on the 3rd, 13th and 23rd of each calendar month, using the total mileage or equivalent thereof accumulated in the preceding 10-day check period and will be multiplied by three and divided by the number of firemen on the list and the result of such will determine the average mileage for the purpose of making such adjustments as may be necessary. It is understood that no adjustment of the extra list will be made until the average mileage falls below the minimum of 2800 miles or is in excess of the maximum of 3800 miles. In the event the average is less than the equivalent of 2800 miles or more than the equivalent of 3800, adjustment of miles is required, by taking the total miles made by the board during the ten-day checking period and multiplying it by three and dividing the total by 3200 miles. The number of firemen on the extra list shall then be decreased or increased as the case may be to the nearest whole number 3200 as obtained, providing this can be done without reducing the average below 2800 miles. In event the 3rd, 13th, or 23rd should fall on Sunday or holiday, it is agreed that check will be made on the following date or preceding date for the convenience of the parties. The 31st day of a calendar month will not be used to adjust lists. Mileage accumulated on the 31st day of the seven calendar months in a year will be totaled in the individual firemen's accumulated mileage. The total mileage, or equivalent thereof, accumulated in the ten-day checking period, as referred to above, will be multiplied by 3 and divided by the number of firemen on the list and the results of such will determine the average miles for the purpose of making such adjustments as may be necessary. The Local Chairman will see that the mileage regulations are complied with."

(6) In the course of normal railroad operations a fireman [79] regularly assigned to a freight pool list is sometimes unavailable for work when he is called to take his regular turn on a freight train about to leave the home terminal, due either to illness or due to arrangements having been made

the 10th day of the month, from the 11th to 20th day of the month, and from the 21st to the 30th day of the month. The rules provide that the total number of miles accumulated by [77] the employees regularly assigned to a freight pool list between the 1st and the 10th days of the month will, on the 13th day of the month, be multiplied by three and the resulting number will be divided by the number of firemen regularly assigned to the freight pool list for the purpose of determining whether the men in the pool are earning mileage at an average rate of between 3200 to 3800 miles per month. If the average miles earned by the men in the pool during the 1st-to-10th day checking period are at a rate in excess of 3800 miles per month per man, then one or more jobs must be bulletined for firemen to bid upon and the fireman or firemen having the greatest seniority among those bidding on the pool jobs shall be added to the freight pool list, the number of additional men to be added to the pool being determined by the number of men that will likely be required to maintain the average mileage during the next mileage checking period between 3200 and 3800 miles per month.

(5) The rule provides that if at the end of the 1st-to-10th day checking period the average mileage earned by the firemen assigned to a freight pool list is at a rate less than 3200 miles per month, then one or more firemen shall be removed from the list, so that the remaining men on the pool list will likely earn mileage during the next checking period at a rate between 3200 and 3800 miles per month. The fireman or firemen thus removed from the freight pool list for the purpose of adjusting the mileage shall be those firemen having the least seniority. A similar adjustment of the mileage earned by the firemen regularly assigned to freight pool [78] lists takes place on the 23rd of the month, based upon the mileage accumulated between the 11th and 20th day of the month, and a third adjustment takes place on the 3rd day of the following month based upon the mileage accumulated between the 21st and 30th days of the month. The schedule rule prescribing the foregoing procedure reads as follows:

“(H) For the purpose of adjusting lists, it is agreed a mileage check will be made on ten-day periods; namely

1st-10th, 11th-20th, and 21st-30th of each calendar month. Adjustments will be made on the 3rd, 13th and 23rd of each calendar month, using the total mileage or equivalent thereof accumulated in the preceding 10-day check period and will be multiplied by three and divided by the number of firemen on the list and the result of such will determine the average mileage for the purpose of making such adjustments as may be necessary. It is understood that no adjustment of the extra list will be made until the average mileage falls below the minimum of 2800 miles or is in excess of the maximum of 3800 miles. In the event the average is less than the equivalent of 2800 miles or more than the equivalent of 3800, adjustment of miles is required, by taking the total miles made by the board during the ten-day checking period and multiplying it by three and dividing the total by 3200 miles. The number of firemen on the extra list shall then be decreased or increased as the case may be to the nearest whole number 3200 as obtained, providing this can be done without reducing the average below 2800 miles. In event the 3rd, 13th, or 23rd should fall on Sunday or holiday, it is agreed that check will be made on the following date or preceding date for the convenience of the parties. The 31st day of a calendar month will not be used to adjust lists. Mileage accumulated on the 31st day of the seven calendar months in a year will be totaled in the individual firemen's accumulated mileage. The total mileage, or equivalent thereof, accumulated in the ten-day checking period, as referred to above, will be multiplied by 3 and divided by the number of firemen on the list and the results of such will determine the average miles for the purpose of making such adjustments as may be necessary. The Local Chairman will see that the mileage regulations are complied with."

(6) In the course of normal railroad operations a fireman [79] regularly assigned to a freight pool list is sometimes unavailable for work when he is called to take his regular turn on a freight train about to leave the home terminal, due either to illness or due to arrangements having been made

with management to lay off for the purpose of attending court hearings or railroad investigations or attending to urgent private affairs, or to take a vacation, or the fireman may be the senior available fireman qualified to work as an engineer and his services are required to fill an emergency need for an additional engineer. When a fireman's assignment on a train in freight pool service is temporarily vacated for any of the foregoing reasons, the schedule rule and the established practice on Southern Pacific has always been for the carrier to call an extra fireman from the firemen's extra list at the terminal where the vacancy occurs to occupy the place of the regularly assigned pool fireman until the latter is able to return to the pool, and the extra fireman's name is placed on the list of firemen working in freight pool service. In adjusting the firemen's freight pool lists on the adjusting days of the month, which are the 3rd, the 13th and the 23rd of each month, the mileage run by an extra fireman temporarily working in the pool has always been treated the same as if it had been run by the regularly assigned fireman for the purpose of adjusting the size of the freight pool. The rule in the existing agreements which provides that temporary vacancies in freight pool service shall be filled by firemen taken from the firemen's extra board reads as follows:

[80] "Firemen assigned to the extra list shall be run first-in and first-out of all division terminals where extra lists are maintained, filling all vacancies in passenger service, freight service, helper service, yard service, or other service which extra men usually perform."

(7) The mileage rules, as above interpreted and applied, have been enforced for many years on the Texas and Louisiana lines of the Southern Pacific. Such rules serve to stabilize employment among the members of the firemen's craft, and they also assure firemen of the right to bid for and hold jobs in freight pool service on the basis of their seniority.

(8) In June, 1964, Southern Pacific announced to this affiant and to the Brotherhood's local chairmen on the six

seniority districts comprising the carrier's lines in the states of Texas and Louisiana that henceforth, and because of the Arbitration Award, the temporary vacancies in firemen's assignments that normally occur in freight pool service when a regularly assigned fireman is unavailable for work would not be filled by calling an extra fireman from the firemen's extra list to fill the vacancy (except where the vacancy occurred on a vetoed assignment), and that the mileage run by the trains thus temporarily operated without a fireman would henceforth be omitted from the total mileage run by the freight pool during a ten-day checking period and reported by Southern Pacific to local chairman on the adjusting dates.

(9) The obvious purpose of Southern Pacific refusing [81] to count the mileage run by trains thus operated without a fireman was to cause the accumulated mileage run by the freight pool during a ten-day checking period to be materially lower than it would have been if the total mileage run by the freight pool during the checking period were used as the basis for adjusting the size of the pool on the adjusting date. This practice resulted in the average mileage earned by the men regularly assigned to a freight pool list frequently falling below the minimum mileage of 3200 miles per month, and this fact provided Southern Pacific with the opportunity or the excuse of reducing the size of the pool. By this means, Southern Pacific succeeded in depriving approximately fifty per cent of the senior firemen holding jobs in the seventeen freight pools of their preferred jobs within a few months after this misapplication of the mileage rules began in June, 1964.

(10) The senior C(7) firemen, when thus removed from the jobs held by them in the seventeen freight pools, were obliged, if they were to be employed at all, to take jobs on switching locomotives in yard service. The latter jobs normally pay substantially lower wages than do the pool jobs (approximately \$6,000 per annum as against \$8,000 per annum, respectively), primarily because yard jobs work only five days per week, and also because yard jobs are less desirable than pool freight jobs because the former often require a fireman to work at night or to work at away-from-home terminals.

[82] (11) The firemen's freight pool at Lufkin, Texas, which operated from Lufkin, Texas, to Shreveport, Louisiana, and return, was one of the seventeen freight pools on the Texas and Louisiana lines of the Southern Pacific Railroad with respect to which Southern Pacific began in June, 1964, to misapply the mileage limitations rules as a means of removing C(7) firemen from the freight pool jobs to which they had been assigned, thereby compelling them to take the lower paying and less desirable jobs in yard switching service. As of the adjusting date of June 3, 1964, the freight trains that were being operated from Lufkin to Shreveport and return provided sufficient mileage for three firemen to be regularly assigned to the Lufkin pool and to enable them to earn mileage at a rate of between 3200 and 3800 miles per month. The regularly assigned firemen on the Lufkin freight pool list on June 3, 1964, were G. L. Moore, H. B. Massingill and E. J. Walker.

(12) During the mileage checking period of June 11 to 20th, 1964, E. J. Walker was required by the carrier to temporarily leave the Lufkin pool and work as an emergency engineer on June 11, 12, 13, 14 and 15. H. B. Massingill was likewise required to work as an emergency engineer on June 11th. On June 10th, Southern Pacific notified the Brotherhood's local chairman that an additional freight train would be added to the Lufkin freight pool on June 11th, and that there would be enough additional miles made by the pool for four firemen to be regularly assigned to the Lufkin pool. The fourth job in the pool was bulletined between June 11th and June 17th in the manner required by the firemen's rules, and on June 18th the [83] job was awarded to the senior fireman among those bidding for the job, namely to J. H. Crenshaw. During the time that E. J. Walker and H. B. Massingill worked as emergency engineers, and also during the time that the fourth job in the pool was under bulletin, Southern Pacific declined to call extra firemen from the firemen's extra list to fill the temporary vacancies, or to count the mileage run by the trains while the firemen's positions were temporarily vacant, with the result that the total mileage earned by the Lufkin pool during the checking period from June 11th to 20th was

reported by Southern Pacific to be only 9,876 miles when adjusted on a monthly basis, which was the equivalent of 2,469 miles for the four firemen assigned to the pool. On the June 23rd adjusting date, the carrier removed E. J. Walker, the junior fireman, from the pool and thereafter one freight train in the Lufkin pool has been continuously operated without a fireman.

(13) The situation in the Lufkin pool thereafter remained constant until the October 1st to 10th checking period. During this period, J. H. Crenshaw laid off because of illness, and the carrier did not call a fireman from the firemen's extra list to fill the vacancy. This had the effect of reducing the average mileage earned by the four firemen assigned to the pool to an average of 3,156 miles per month, with the result that on the October 13th adjusting date the carrier removed H. B. Massingill from the Lufkin pool, and thereafter the freight train to which he had been assigned has been continuously operated without a fireman.

[84] (14) The assignments in the Lufkin pool thereafter remained constant until the December 1st to 10th checking period. Fireman J. H. Crenshaw laid off sick during that period, and the pool train to which he was assigned was operated without a fireman, and the mileage which that train ran was not taken into account on the next adjusting date, viz., December 13th. The result was that the mileage earned by the two remaining firemen in the pool was at an average rate of 2206.5 miles per month, and on December 13th the carrier removed the junior of the two firemen, J. H. Crenshaw, from the pool, and the freight train turn to which he had been assigned has been continuously operated without a fireman.

(15) During the December 11th to 20th checking period, Fireman G. L. Moore laid off to take his vacation, and the vacancy thus created was not filled by calling a fireman from the extra list. The result was that on the December 23rd adjusting date, Southern Pacific announced that there was no mileage recorded to the credit of the firemen's freight pool at Lufkin, and, hence, G. L. Moore would be removed from the pool. From that date to the present time, the firemen's pool at Lufkin has ceased to exist, although the

engineers freight pool at Lufkin, which is assigned to operating the same trains as the firemen's pool at Lufkin was assigned to operate, has had at all times since June 18, 1964, four engineers assigned to the engineers freight pool list and working regularly.

(16) The manner in which Southern Pacific misapplied [85] the mileage rules to the firemen's freight pool list at Lufkin, Texas, between June 10th and December 23rd, 1964, so as to deprive all of the firemen regularly assigned to that pool of their jobs, thereby forcing those firemen to either take jobs on undesirable yard switching locomotives, or to cease working for Southern Pacific, was repeated on the other sixteen firemen's freight pools operated on the six seniority districts comprising Southern Pacific's Texas and Louisiana lines, with the result that the following senior firemen among the C(7) firemen employed on the carrier's Texas and Louisiana lines were deprived of the preferred jobs held by them on June 1, 1960, and prior thereto, as follows:

Houston and Texas Central Seniority District

Freight Pool Territory	Fireman Removed from Pool	Date Removed	Pool Turn Assignment Held Prior to Removal
Ennis to Ft. Worth		5:40 p.m.	
Ennis to Hearne & Denison and Return	V. R. Blakley	June 3, 1964	* 17
"	A. M. Blount	5:40 p.m. June 3, 1964	* 8
"	L. H. Whitacre	5:40 p.m. June 3, 1964	* 18
"	J. C. Ray	5:40 p.m. June 3, 1964	* 12
"	W. N. Reed	5:40 p.m. June 3, 1964	* 6
"	H. B. Martin	Oct. 23, 1964	* 10
"	H. L. Roberts	Sept. 5, 1964	* 15
"	C. L. Lancaster	Nov. 13, 1964	* 16
"	D. C. Colston	June 23, 1964	* 9
"	B. W. Splawn	Oct. 23, 1964	* 1
"	W. N. Reed	Sept. 14, 1964	* 13

[86] Freight Pool List at Houston, Texas

Freight Pool Territory	Fireman Removed from Pool	Date Removed	Pool Turn Assignment Held Prior to Removal
Houston to Hearne	M. M. Jacobs	June 3, 1964	* 1
and Return	W. Weathers	June 23, 1964	* 3

Dalsa Freight Pool Freight List at San Antonio, Texas

San Antonio to Hearne	E. C. Vaughn	June 13, 1964	* 3
and Return	B. H. McWhorter	June 13, 1964	* 8

El Paso—Del Rio Seniority District

Freight Pool List at El Paso, Texas

El Paso to Valentine	R. B. Rosson	June 13, 1964	Not Furnished
and Return			by Local Chmn.
"	P. L. Starnes	June 13, 1964	"
"	J. Williamson	June 13, 1964	"
"	J. P. Clark	July 13, 1964	"

Freight Pool List at Sanderson, Texas

Sanderson to Valen-	J. C. Wilcox	June 3, 1964	* 13
tine and Return	H. M. Petty	June 3, 1964	* 1
"	T. W. McKenzie	July 3, 1964	* 8
"	M. W. Cole	July 3, 1964	* 3
"	C. E. Odom	July 3, 1964	* 2
"	G. M. Carter	Aug. 3, 1964	* 6

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Sanderson to Valentine	K. K. Robinson	Aug. 13, 1964	* 11
and Return	J. L. Whistler	Aug. 13, 1964	* 3
"	J. O. Fountain	Sept. 13, 1964	* 7
"	T. J. Stewart	Oct. 13, 1964	* 15
"	R. F. Kuethe	Oct. 13, 1964	* 5

Freight Pool List at Del Rio, Texas

Del Rio to Sanderson	W. L. McCuller	Aug. 4, 1964	* 11
and Return	C. B. Buchager	June 23, 1964	* 2

Houston, East and West Texas Seniority District

Freight Pool List at Lufkin, Texas

Freight Pool Territory	Fireman Removed from Pool	Date Removed	Pool Turn Assignment Held Prior to Removal
Lufkin, Texas to Shreveport, Louisiana and Return	E. J. Walker	June 23, 1964	Not Furnished by Local Chmn.
"	H. B. Massingill	Oct. 13, 1964	"
"	J. H. Cronshaw	Dec. 13, 1964	"
"	G. L. Moore	Dec. 23, 1964	"

Pool Freight Board—Houston, Texas

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Houston to Lufkin and Return	T. W. Wall	June 23, 1964	Not Furnished by Local Chmn.
"	Frank Danna	Aug. 3, 1964	"
"	J. C. Stuckey	Aug. 13, 1964	"

Houston—Lafayette Seniority District

Freight Pool List at Houston, Texas

Houston to Echo and Return	B. E. Moseley	June 13, 1964	* 1
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Pool Freight Board—Lafayette, Louisiana

Lafayette, Louisiana to Echo, Texas and Return	B. L. McWilliams	July 3, 1964	Not Furnished by Local Chmn.
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Houston—Victoria—Del Rio Seniority District

West Freight Pool List at San Antonio, Texas

San Antonio to Del Rio and Return	M. Johnson	June 13, 1964	* 11
"	J. A. Peters	June 13, 1964	* 15
"	J. J. Ward	June 13, 1964	* 18
"	L. R. Mead	Aug. 13, 1964	* 3

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San Antonio to Del Rio and Return	T. M. Morton	Aug. 13, 1964	* 12
"	E. L. Conrad	Sept. 3, 1964	* 4

East Freight Pool List at San Antonio, Texas

Freight Pool Territory	Fireman Removed from Pool	Date Removed	Pool Turn Assignment Held Prior to Removal
San Antonio to Glidden and Return	J. F. Luedecke	July 13, 1964	# 1

Dalsa Freight Pool List at San Antonio, Texas

San Antonio to Hearne and Return	R. L. Ricks	June 13, 1964	# 8
"	G. H. Prause	July 13, 1964	# 2
"	J. A. Bounds	June 13, 1964	# 7

(B) Freight Pool List at San Antonio, Texas

San Antonio to Alice, Texas and Return	D. J. Horn	June 3, 1964	# 2
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(C) Freight Pool List at Houston, Texas

Houston to Victoria and Glidden and Return	J. R. Sandras	June 13, 1964	Not Furnished by Local Chmn.
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Houston to Victoria and Glidden and Return	R. M. Sandelovic	June 13, 1964	Not Furnished by Local Chmn.
"	E. R. Harwell	June 13, 1964	"
"	C. J. Skalicky	June 13, 1964	"
"	I. C. Williamson	June 23, 1964	"

Morgan, Louisiana and Texas Seniority District

Freight Pool List at Avondale (New Orleans, Louisiana)

Avondale, Louisiana to Lafayette, Louisiana and Return	A. J. Trosclair	June 13, 1964	# 6
"	R. N. Fiegel	July 23, 1964	# 3

(17) The same method of misapplying the mileage limitation rules for the purpose of removing senior C(7) firemen from their assignments on freight pool lists under the guise of enforcing the Arbitration Award, was used by Southern Pacific to remove C(7) firemen from assignments on regularly scheduled freight trains.

(18) For many years prior to the effective date of the Arbitration Award Southern Pacific operated scheduled freight trains Nos. 371 and 352 daily in each direction between Alice and Brownsville, Texas. The distance between Alice and Brownsville is 160 miles. For some period prior to August 15, 1964, Fireman C. B. Jordan and Fireman A. L. Blagg were two of the three firemen regularly assigned to [91] trains No. 371 and No. 352. The established work schedule for each of the three firemen was to go from Alice to Brownsville one day on train No. 371 and return the following day from Brownsville to Alice on train No. 352. The next day the fireman would lay over at Alice, the home terminal, and on the fourth day the cycle would be started over again.

(19) On August 15, 1964, C. B. Jordan and A. L. Blagg temporarily vacated their assignments for the purpose of taking a two-week vacation to which they were entitled under the firemen's schedule agreement. The temporary vacancies thus occurring in the firemen's assignments on trains No. 371 and No. 352 were not filled by Southern Pacific by calling extra firemen from the firemen's extra list at Yoakum, Texas. Upon reporting for work at the end of their vacations on August 15, 1964, C. B. Jordan and A. L. Blagg were informed by Southern Pacific that their assignments on trains No. 371 and No. 352 had been terminated because no mileage had been made by firemen working on those trains between the mileage checking period of August 1st to 10th, and, hence, the minimum mileage prescribed by the firemen's mileage rules had not been earned, and under the authority granted to Southern Pacific by Part A(1) and Part B(5) of the Arbitration Award the carrier was entitled to cancel their assignments.

(20) Thereafter C. B. Jordan and A. L. Blagg, if they were to continue working, had no alternative but to "bump"

firemen their junior in seniority from jobs held at other terminals. Southern Pacific's action in thus depriving C. B. Jordan and A. L. Blagg of their regular assignments on trains No. 371 and No. 352 was [92] arbitrary and was not consistent with the provisions and the intent of the Arbitration Award.

(21) Other senior C(7) firemen, namely E. H. McClain, A. R. Koehl and L. B. Hawkes, of Victoria, Texas, were arbitrarily removed by Southern Pacific from regular assignments held by them on scheduled freight trains under similar circumstances and with the same pretense of authority from the Arbitration Award as was used by Southern Pacific when removing Firemen C. B. Jordan and A. L. Blagg from their assignments.

(22) Firemen E. H. McClain, A. R. Koehl and L. B. Hawkes held assignments on regularly scheduled freight trains once designated as trains No. 371 and No. 372, which were operated daily between Victoria and Houston, Texas, a distance of 132 miles. Fireman E. H. McClain was arbitrarily removed from his assignment on July 10, 1964, after being temporarily absent from his assignment because of being on vacation from July 1 through July 7, 1964. Fireman A. R. Koehl was arbitrarily removed from his assignment on July 14, 1964, after he had been temporarily absent from his assignment because he was required to work as an emergency engineer from July 1 to July 9, 1964. Fireman L. B. Hawkes was removed from his assignment on July 21, 1964, after he had been temporarily absent from his assignment because of taking his vacation from July 1 to July 21, 1964, in compliance with the firemen's schedule rules. E. H. McClain, A. R. Koehl and L. B. Hawkes, after thus being removed from their assignments contrary to the firemen's schedule rules and contrary to the terms and the intent of the Arbitration [93] Award, were thereafter obliged to work off the firemen's extra list at Victoria, Texas, at lower pay and on less desirable assignments and working conditions.

(23) Southern Pacific's misapplication of the mileage rules in a manner designed to eliminate the senior firemen from their jobs in the firemen's freight pools violates the terms and the intent of the Arbitration Award, which is to

the effect that firemen having more than ten years of seniority as of the effective date of the Award would continue in their employment and retain their job rights and other employment rights based upon seniority as those rights existed under the agreements and rules in effect on the day preceding the day the Award became effective, until such time as their employment terminated as a result of death, retirement, ill health, or they are discharged for cause, but subject to the qualification that the carrier may require them to leave their assignments when their services are needed either temporarily or permanently in passenger service, or on vetoed freight assignments or vetoed yard assignments. The right of firemen with more than ten years of seniority to continue to be employed under the same terms and conditions of employment as were in effect on the day preceding the day the Award became effective is prescribed by Part C(7) and Parts D(2), D(3) and D(4) of the Award, and by the Board's interpretations of the Award in answering BLF&E Questions No. 41 and No. 74(b); and Question No. 77, issued September 16, 1964.

(24) Part C(7) of the Award reads as follows:

[94] "Firemen (helpers) with 10 or more years of seniority as of the effective date of this Award, who are not separated from the carrier's payrolls under the provisions of paragraphs C(3) or C(4) of this Award, shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective, except as modified by and subject to the provisions of Part D of this Award, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of firemen (helpers) by natural attrition."

(25) Part D(2) of the Award reads as follows:

"Firemen (helpers) who remain on the active working lists of the carrier under the provisions of Paragraphs C(6) and C(7) of this Award shall have the right to work their turn as firemen (helpers) to the extent that positions as firemen (helpers) are available

in their respective seniority districts on locomotives of the type to which firemen (helpers) were assigned and in a class of service calling for the service of a fireman (helper) prior to the effective date of this Award; provided, that such firemen (helpers) shall have no right to jobs that the carrier may discontinue pursuant to the provisions of this Award if other employment in any class of engine service, for which they are qualified, is available to them in their respective seniority districts. Such firemen (helpers) will have their seniority rights, existing as of the effective date of this Award, for promotion in their turn, preserved."

(26) Part D(3) of the Award reads as follows:

"Extra lists shall be adjusted and firemen (helpers) shall be furloughed and recalled pursuant to the provisions of rules in effect as of the day before the day this Award becomes effective, as modified by and subject to the provisions of this Award; provided, that the carrier shall not be required to use firemen (helpers) covered by paragraph D(2) of this Award in freight or yard crews, other than in crews designated by the local chairmen pursuant to the provisions of paragraph D(2) and D(3), if the services of such employees are required on the extra lists to fill vacancies in crews or positions where firemen (helpers) must be used, as in passenger service or under the provisions of this Award."

[95] (27) Part D(4) of the Award reads as follows:

"Firemen (helpers) retained in service under the conditions set forth in Parts C and D of the Award, when assigned to the extra lists for firemen (helpers), shall not be called to fill vacancies in crews in freight and yard service which have not been designated by the local chairmen pursuant to the provisions of paragraphs B(2) and B(3) of this Award if and when their services are required to fill temporary vacancies as locomotive engineers, or temporary vacancies for firemen (helpers) in passenger service, or temporary vacan-

cies for firemen (helpers) in crews designated by the local chairmen as provided in paragraphs B(2) and B(3) of this Award."

(28) BLF&E Questions No. 41 and No. 74(b), and the Board's answer thereto, read as follows:

"Question No. 41: May the carriers ignore, and in effect nullify, the minimum mileage provisions of existing agreements in their adjustment of extra lists for helpers-firemen and engineers under this Award?"

"Question No. 74(b): Is it the intent of the Award to allow the carrier to "blank" assignments to the extent that helpers-firemen in pool freight service and on the extra list are held to a minimum mileage under existing agreements, said agreements providing for both a minimum mileage?"

Answer: The following answers both of these questions: The Board does not find that the provisions of Section II, Part D permit the carriers to ignore or nullify the minimum and maximum mileage provisions of existing agreements as they relate to the adjustment of pool freight service or extra lists."

(29) BLF&E Question No. 77, and the Board's answer thereto, reads as follows:

"Question No. 77: May a carrier refuse to compute and apply the mileage of assignments operated without a helper-fireman when adjusting the extra board and/or assignments within a freight pool?"

Answer: The Board does not find that the provisions of Section II, Part D in any way change existing practices respecting computation of [96] mileage run and hours worked in connection with the adjustment of freight pools and extra lists."

(30) The authority granted a carrier by the Arbitration Award to blank a blankable job and thereafter operate it without a fireman was intended to be subordinate to the

right of C(7) firemen to continue to exercise their rights to bid for and to hold jobs on the basis of their seniority, and to otherwise work in keeping with the rules governing their employment as those rules existed prior to the effective date of the Award.

PART IV

Southern Pacific, Claiming that Part A(1) and Part B(5) of the Arbitration Award Authorizes a Carrier to Deny C(7) Firemen the Right to Exercise Their Seniority and to Hold Jobs in Accordance with the Rules that Governed Their Employment on the Day Preceding the Effective Date of the Arbitration Award, Has Refused Since June 25, 1964, to Bulletin Vacant Runs and Has Refused to Permit C(7) Firemen to Select Jobs on the Basis of Their Seniority, by Requiring Them to Take Such Assignments as the Carrier Dictates, Thereby Depriving the Senior C(7) Firemen of Valuable Employment Rights, Contrary to the Terms and the Intent of the Arbitration Award.

(1) For many year prior to June, 1964, Southern Pacific has, on the six seniority districts comprising its Texas and Louisiana lines, consistently followed the practice of informing its locomotive firemen (helpers) whenever firemen's assignments in any class of service became permanently vacated or new firemen's assignments were about to be established. Such information was made available to the employees by posting bulletins for a period of seven [97] days at all terminals on the seniority district where the vacancy occurred or the new run was to be established. The job or assignment thus bulletined would be awarded to the fireman among those bidding for the job who had the most seniority, subject, however, to the right of the senior fireman employed on the seniority district to request and receive the job before the expiration of the bulletining period of seven days. If no fireman bid for the job, the junior fireman on the fireman's extra list at the terminal where the vacancy or open run occurred would be offered the job, and if he declined to take the job it would be filled by a fireman from the extra list while the job was again

bulletined. The foregoing practices were and are in keeping with the following rules in the collective agreement between Southern Pacific and the Brotherhood:

"Bulletining Runs and Assignments: All permanent vacant or open runs, including yard engines, shall be bulletined for seven (7) days for seniority choice of all firemen, provided the senior fireman or firemen of the district do not make application for said run or runs or yard engines prior to the seven day limit; but in case the senior firemen make application for the runs, he or they shall at once be assigned and bulletin withdrawn.

"In case a run, working at or out of a terminal where an extra list is maintained, remains bulletined for seven (7) days and no application is made therefor, the junior extra fireman in service at the terminal where the vacancy occurs will be assigned; on outlying runs, the junior extra fireman in service on the seniority district will be assigned."

* * * * *

"When the mileage on a regular established run is increased or decreased 300 miles or more per month, the initial or final terminal station, the lay-over point or lay-over day is changed, or the scheduled leaving time is changed 3 hours or more, such run will be considered a new run and bulletined. This not to apply to pool service where the mileage is uncertain."

* * * * *

[98] *"Rebulletining Assignments:* When a regular yard assignment is changed more than one hour and thirty minutes in starting time, it shall be bulletined, but in such cases the fireman found on such position may remain on same until assignment is made, where extra lists are maintained; but at outlying points, where there are no extra lists, he must remain until assignment is made."

* * * * *

"Seniority of Firemen: Rights of firemen to preference of runs shall be governed by seniority as firemen with this Company."

(2) Under the rules contained in the collective agreements between Southern Pacific and the Brotherhood a job to which a fireman has been assigned becomes permanently vacated in one of four ways:

First, by the regularly assigned fireman leaving his job for the purpose of taking another job which has been bulletined and on which he is the successful bidder;

Second, by the regularly assigned fireman taking a leave of absence for 90 days or more, or by being discharged;

Third, by the regularly assigned fireman being absent from work 90 days because of sickness, or by dying;

Fourth, by the regularly assigned fireman being called to work as an engineer and being placed on the engineers' extra list.

If the job held by a regularly assigned fireman is not permanently vacated in one of the four ways described, *supra*, then under the working rules that were in effect on the day preceding the day the Arbitration Award became effective a fireman holding a job may continue to hold that job indefinitely, subject only to the right of a senior fireman to "bump" him from the job, or the right [99] of the carrier to abolish the job by ceasing to operate the train or the switching assignment upon which the existence of the job depends.

(3) Beginning in June, 1964, Southern Pacific ceased complying with the rules in the firemen's agreement requiring it to bulletin all permanently vacant and all newly established firemen's jobs in freight and yard service and to award such jobs to the firemen bidding on the job and having the most seniority. Instead of bulletining jobs when they became vacant or were newly established, Southern Pacific seized upon the fact that a job existed to which no fireman was assigned as an excuse to declare the job blanked, and it thereafter operated the freight train or the switching locomotive, as the case might be, without a fire-

man being a member of the crew, maintaining that it was authorized by the Arbitration Award to disregard the rules requiring the bulletining of vacant and open runs.

(4) One of the 17 freight train pools operated by Southern Pacific on its Texas and Louisiana lines is known as the Dalsa freight train pool. The home terminal of the Dalsa pool is at San Antonio, Texas, on the Houston & Texas Central Seniority District. Fireman W. Weathers held pool turn No. 5 in the Dalsa freight train pool for a period of time prior to June 24, 1964. Fireman Weathers' services as an engineer were required by Southern Pacific and he was accordingly moved to the engineers' extra list and thereafter worked as an engineer. Freight Pool Turn No. 5 was put up for bids on June 24, and it was due to be awarded, according to the firemen's schedule rules, on June 30, 1964, to the senior fireman bidding for the assignment.

(5) For some time prior to June 24, 1964, freight pool turn No. 6 in the Dalsa freight train pool was held by Fireman [100] W. M. Douglas, but his services as a locomotive engineer were also needed by Southern Pacific and he was accordingly transferred on June 24, 1964, to the engineers' extra list and thereafter worked as a locomotive engineer. Freight pool turn No. 6 was bulletined for bids on June 24, 1964, and was due to be awarded on June 30, 1964, to the senior fireman bidding on the assignment.

(6) On June 26, 1964, Southern Pacific issued instructions to its operating officers at the district or division level directing them to cease from that day forward complying with the firemen's schedule rules requiring the bulletining of permanently vacant or newly established firemen's assignments and the awarding of jobs on the basis of firemen's bids and their seniority. The bulletining of freight pool turns Nos. 5 and 6 were accordingly pulled down on June 26, 1964, before the jobs were awarded to the highest bidders. Fireman L. J. Johnson was the senior bidder for freight pool turn No. 5, and Fireman H. S. Mounds was the senior fireman bidding for freight pool turn No. 6. The jobs were not awarded to Fireman Johnson or Fireman Mounds, and freight pool turns Nos. 5 and 6 have, since

June 26, 1964, been operated without a fireman being a member of the crews.

(7) From June, 1964, to the present date Southern Pacific has consistently refrained from and refused to announce by bulletin to its firemen employees the vacating or the opening of new firemen's assignments as such developments have occurred in the 17 freight train pools operated by the carrier on its lines in the States of Texas and Louisiana.

(8) The effect of Southern Pacific's refusal since June, [101] 1964, to bulletin permanently vacant or newly opened assignments as they developed in the 17 freight train pools has been to close or deny to senior C(7) firemen a very substantial number of preferred firemen's assignments on the carrier's Texas and Louisiana lines. This action by Southern Pacific had the effect of compelling C(7) firemen, if they were to continue working, to displace firemen junior to them from jobs held by the junior firemen in yard switching service, and also to take yard switching jobs that were vacated as a result of the earlier discharge by the carrier of all C(2) and C(6) firemen pursuant to the Arbitration Award. This "bumping" of junior firemen from assignments held by them in yard switching service continued to the point where all firemen's assignments in yard switching service on the six seniority districts comprising the carrier's lines in the States of Texas and Louisiana were filled and many junior firemen among the C(7) firemen had been ousted from their jobs and were without employment.

(9) Southern Pacific, being obliged by Part C(7) of the Award to continue to employ all C(7) firemen until they retired from service, proceeded to open up jobs in pool freight service which had been vacated in the manner and under the circumstances described in paragraphs 3, 4 and 5 *supra*, so as to provide sufficient jobs to keep all C(7) firemen employed, but in opening up jobs in pool freight service Southern Pacific disregarded the rules in the firemen's agreements requiring the bulletining of newly opened jobs. Southern Pacific thereby prevented the senior C(7) firemen who were holding jobs in yard switching service from bidding on the pool jobs thus opened and acquiring such

jobs on the basis of their seniority. The senior [102] C(7) firemen who had been compelled to take jobs in yard switching service were in effect "frozen" to those jobs by Southern Pacific's action, while junior C(7) firemen were assigned to jobs in pool freight service by the dictates of Southern Pacific. The junior C(7) firemen assigned to the newly opened pool freight jobs were not permitted to bid on and obtain those jobs on the basis of seniority.

(10) By failing to bulletin the newly opened jobs in pool freight service, thereby freezing the senior C(7) firemen to the yard switching jobs to which they had previously been forced, and by dictating the respective assignments that firemen would hold among the newly opened jobs in freight pool service, Southern Pacific has deprived numerous C(7) firemen of the rights to and obligations to protect engine service assignments as provided by the rules that were in effect on the day preceding the day the Arbitration Award became effective, although Southern Pacific explains and excuses its disregard of the rights of C(7) firemen on the ground that it is authorized by Part A(1) and Part B(5) of the Award to take such action.

(11) Southern Pacific's refusal after June, 1964, to bulletin vacant and newly opened firemen's assignments in freight pool service and to permit C(7) firemen to select jobs on the basis of seniority in that service was extended to assignments in regularly scheduled freight service and to assignments in yard switching service when they became vacant or were newly established. Since June, 1964, firemen's assignments in regularly scheduled freight service and in yard switching have been filled by Southern Pacific assuming to decide what fireman should fill what particular assignments, and issuing orders accordingly.

[103] (12) Because of the foregoing actions on the part of Southern Pacific, the following C(7) firemen have been denied the right to bid for vacated or newly opened assignments or to otherwise exercise their employment rights based upon seniority, contrary to the terms and the intent of the Arbitration Award, on the dates and under the circumstances indicated below:

Houston and Texas Central Seniority District

Freight Pool List at Ennis, Texas

Freight Pool Territory	Fireman Deprived	Date	Pool Turn Assignment Not Bulletin and Reason
Ennis to Ft. Worth and Return—Ennis to Hearne and Return	J. B. Miller	July 3, 1964	# 4
"	Joe Sramek	July 18, 1964	# 5
"	A. R. Goodman	July 20, 1964	# 7
"	L. Cooksey	July 27, 1964	# 2
"	L. McDonald	June 15, 1964	# 16
"	R. R. Costlon	June 10, 1964	# 1

Freight Pool List at Houston, Texas

Houston to Hearne and Return	O. W. Dyess	June 30, 1964	Vacated by M. L. Whitacre
"	R. F. R. Kramer	July 27, 1964	Vacated by L. T. Warren—placed on Engineers Extra List Houston July 20, 1964

Dalsa Freight Pool List at San Antonio, Texas

Freight Pool Territory	Fireman Deprived	Date	Reason of Claim
Pool Turn #5 vacated by W. Weathers [104]	San Antonio to Hearne and return	L. J. Johnson July 1, 1964	Bulletin # 601 expiring June 30, 1964 not assigned (cancelled)
Pool Turn #6 vacated by W. M. Douglas Cancelled Bulletins 4:45 p. m. June 26	San Antonio to Hearne & Return	H. S. Mounts July 1, 1964	Bulletin # 606 expiring June 30, 1964 not assigned (cancelled)
	"	A. R. Bostie June 25, 1964	Bulletin # 581 expiring June 24, 1964 cancelled This bulletin covered Pool Turn #7—Vacated by Fireman M. E. White- head due to being placed on engineer's extra list Austin, Texas

El Paso—Del Rio Seniority District
Freight Pool List at El Paso, Texas

Freight Pool Territory	Fireman Deprived	Date	Pool Turn Assignment Not Bulletin
El Paso to Valentine and Return	R. W. Maxey	June 23, 1964	No Information
"	G. L. Dyer	July 3, 1964	"
"	L. J. Hartzog	July 3, 1964	"
"	J. A. Hurley	July 3, 1964	"
"	D. Strother	July 13, 1964	"
"	M. H. Bridges	July 13, 1964	"
"	B. T. Harris	July 23, 1964	"
"	G. H. Stevens	July 23, 1964	"
"	V. V. Long	July 23, 1964	"
"	James T. McDonald	July 23, 1964	"
"	J. L. Holcomb	July 23, 1964	"

[105] Freight Pool List at Sanderson, Texas

Freight Pool Territory	Fireman Deprived	Date	Pool Assignment Deprived
Sanderson-Valentine	C. O. Cash	Aug. 13, 1964	* 11
"	M. E. Hope	July 29, 1964	* 7

Dalsa Freight Pool List at San Antonio, Texas

Freight Pool Territory	Fireman Deprived	Date	Reason of Claim
Pool Turn #5 vacated by W. Weathers [104]	San Antonio to Hearne and return	L. J. Johnson July 1, 1964	Bulletin # 601 expiring June 30, 1964 not assigned (cancelled)
Pool Turn #6 vacated by W. M. Douglas Cancelled Bulletins 4:45 p. m. June 26	San Antonio to Hearne & Return	H. S. Mounts July 1, 1964	Bulletin # 606 expiring June 30, 1964 not assigned (cancelled)
	"	A. R. Bostic June 25, 1964	Bulletin # 581 expiring June 24, 1964 cancelled This bulletin covered Pool Turn #7—Vacated by Fireman M. E. White- head due to being placed on engineer's extra list Austin, Texas

El Paso—Del Rio Seniority District
Freight Pool List at El Paso, Texas

Freight Pool Territory	Fireman Deprived	Date	Pool Turn Assignment Not Bulletin
El Paso to Valentine and Return	R. W. Maxey	June 23, 1964	No Information
"	G. L. Dyer	July 3, 1964	"
"	L. J. Hartzog	July 3, 1964	"
"	J. A. Hurley	July 3, 1964	"
"	D. Strother	July 13, 1964	"
"	M. H. Bridges	July 13, 1964	"
"	B. T. Harris	July 23, 1964	"
"	G. H. Stevens	July 23, 1964	"
"	V. V. Long	July 23, 1964	"
"	James T. McDonald	July 23, 1964	"
"	J. L. Holcomb	July 23, 1964	"

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Freight Pool List at Sanderson, Texas

Freight Pool Territory	Fireman Deprived	Date	Pool Assignment Deprived
Sanderson-Valentine	C. O. Cash	Aug. 13, 1964	* 11
"	M. E. Hope	July 29, 1964	* 7

Freight Pool List at Del Rio, Texas

Freight Pool Territory	Fireman Deprived	Date	Reason
Del Rio to Sanderson and Return	J. R. Green	June 30, 1964	Pool Turn #3 vacated by Fire- man J. L. Schwalbe placed on Engi- neers' Extra List Del Rio. This turn bulletined June 23, 1964, but cancelled by carrier June 25, 1964.
"	E. E. Sankey	June 30, 1964	Pool Turn #14 Va- cated by Fireman J. R. Green when he was forced as- signment to pas- senger trains 1 and 2 account of no fireman filing ap- plication. Turn #14 bulletined June 23, 1964, cancelled by carrier June 25, 1964.
"	W. G. Simmons	Aug. 4, 1964	Displaced from this pool by senior Fire- man Bowers on Aug. 4, 1964. There were 8 pool turns blanked at this time by reason of carrier's failure to bulletin same.

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Houston, East and West Texas Seniority District

Freight Pool List at Houston, Texas

Freight Pool Territory	Fireman Deprived	Date Effected	Reason of Vacancy
Houston to Lufkin and Return	C. B. Hendrick	July 3, 1964	Mileage called for turn to be added
"	E. L. Wagnon	Nov. 3, 1964	"

Houston—Lafayette Seniority District

Freight Pool List at Houston, Texas

Houston to Echo and Return	E. E. Koon	July 10, 1964	Put on Engineers Extra Board—7-3-64—Fireman Anderson
"	J. W. Pearce	July 10, 1964	Put on Engineers Extra Board—Fireman Matheis 7-3-64
"	J. F. Kitchen	July 10, 1964	Bid in passenger 1 and 2—Fireman Driscoll
"	L. G. Smith	July 30, 1964	Bid in passenger 1 and 2—Fireman Long
"	H. Coker	Aug. 20, 1964	Mileage called for 1 fireman increase 8-23-64
"	W. L. Clevenger	Oct. 20, 1964	Mileage called for 1 fireman increase on October 13, 1964 would have been cut off December 3, 1964

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Houston—Victoria—Del Rio Seniority District

West Freight Pool List at San Antonio, Texas

Freight Pool Territory	Fireman Deprived	Date Effectuated	Reason of Claim Filed
San Antonio to Del Rio and Return	R. L. Mack	June 29, 1964	Turn # 6 not Bulletined
"	W. A. Britton	July 22, 1964	Displaced off Turn # 13 Improperly
"	W. Ham	Aug. 6, 1964	Displaced by Fuller Turn # 14
"	F. W. French	Aug. 24, 1964	Displaced by Fuller Turn # 9
"	M. L. Buckert	Sept. 5, 1964	Displaced by C. Harper Turn # 2
"	J. S. Smitherman	Sept. 6, 1964	Displaced by W. G. Curtis Turn # 10
"	H. H. Leesch	Sept. 7, 1964	Displaced by I. R. Toman Turn # 17
"	J. R. Bates	Oct. 21, 1964	Vacated Turn # 18 R. R. Stoker Turn blanked

East Freight Pool List at San Antonio, Texas

San Antonio to Glidden and Return	W. S. Kelley	July 3, 1964	Mileage called for 1 turn increase and carrier blanked
"	P. W. Newman	Aug. 4, 1964	Displaced by Fireman Horn with blank turn on board and not bulletined

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Freight Pool (B) List at San Antonio, Texas

Freight Pool Territory	Fireman Deprived	Date Effectuated	Reason of Claim Filed
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San Antonio to Alice, Texas and Return	H. T. Doan	Aug. 3, 1964	Displaced by Fireman F. E. Brecher Turn # 3, with Turn # 2 blanked
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Freight Pool (C) List at Houston, Texas

Houston—Glidden and Victoria and Return	Fireman Deprived	Date Effectuated	Reason of Claim Filed
	W. G. Rosser	Sept. 15, 1964	Returned to Fireman's position from Engineer on Sept. 15, 1964. There were 5 blanked turns in this pool—carrier had refused to bulletin for seniority choice in which his seniority would have permitted him to have held.

Freight Pool (E) Victoria, Corpus Christi & Yoakum List

Victoria—Corpus Christi and Yoakum	Fireman Deprived	Date Effectuated	Reason of Claim Filed
	R. W. Absta	July 13, 1964	Displaced by Fireman E. H. McClain with 2 blanked jobs open and not bulletined
"	J. O. Lampley	July 10, 1964	Refusing to bulletin vacancy by K. F. Bernhart when he was placed on engineers extra board Victoria July 3, 1964
"	W. E. Brzozowski	July 20, 1964	Carrier refused to bulletin pool assignment when mileage called for 1 fireman increase

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Freight Pool Territory	Fireman Deprived	Date Effectuated	Reason of Claim Filed
Victoria—Corpus Christi and Yoakum	R. F. Petrus	Sept. 13, 1964	Carrier refused to bulletin pool assignment when mileage called for 2 firemen increase
"	M. L. Diebel	Sept. 13, 1964	Carrier refused to bulletin pool turn mileage agreement called for increase

Morgan, Louisiana & Texas Seniority District

Freight Pool List at Avondale, Louisiana (New Orleans)

Avondale, Louisiana to Lafayette and Return	W. J. Hildebrand	July 20, 1964	Pool Turn #7 vacated by Fireman Ohlsson and placed on Engineer Extra Board—Carrier refused to bulletin
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Houston & Texas Central Seniority District

Regular Freight Trains 232—233—Yoakum, Texas

Territory of Assignment	Fireman Affected	Date Effectuated
Yoakum to Hearne and Return	O. L. Bland	Nov. 3, 1964

Houston, East and West Texas Seniority District

Regular Assigned Local Service, Trains 215—216—Houston, Texas

Territory of Assignment	Senior Fireman Deprived	Date Effectuated
Houston to Lufkin and Return (Sunday layover Lufkin)	O. L. McCullough	July 15, 1964

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Regular Assigned Local Service, Trains 217—218—Lufkin, Texas

Territory of Assignment	Senior Fireman Deprived	Date Effectuated
Lufkin, Texas to Shreveport, Louisiana and Return	F. M. Johnson	July 10, 1964

Houston—Lafayette Seniority District

LaPorte Switcher—LaPorte, Texas

LaPorte—Strang and DuPont plant	M. C. Schwartz	July 23, 1964
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Lake Charles, Louisiana—Lake Charles Yard

Yard Territory	Fireman Affected	Date Effectuated	Hours of Assignment
Lake Charles, Louisiana	H. J. Huval	Oct. 22, 1964	3:30 p. m. to 11:30 p. m.

Houston—Victoria—Del Rio Seniority District

Regular Freight Assignment, Trains 357—358—Alice-McAllen, Texas

Territory of Assignment	Fireman Deprived	Date Effectuated
Alice to McAllen and Return	V. E. Dubose	June 28, 1964

Morgan, Louisiana & Texas Seniority District

Regular Freight Assignment Trains 519—520—Midland Branch

Midland Branch—	C. Guidry	June 15, 1964
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Regular Freight Assignment Trains 527—528—Eunice—New Iberia, Louisiana

New Iberia, Louisiana to Eunice, Louisiana and return—Sunday layover New Iberia	E. J. Cormier	Oct. 22, 1964
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[111]

Territory of Assignment	Fireman Deprived	Date Effected
New Iberia, Louisiana to Eunice, Louisiana and return—Sunday layover Eunice, Louisiana	C. J. Andrus	June 3, 1964

Regular Yard Assignment—New Iberia, Louisiana

Location Yard	Fireman Deprived	Date Effected
New Iberia, Louisiana	E. V. Revette	June 18, 1964

(13) Part A(1) of the Arbitration Award reads as follows:

“A(1). All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award.”

(14) Part B(5) of the Award nullifies Section 4 of the National Diesel Agreement of May 17, 1950, to which Southern Pacific is a party, with the exception that the Award does not affect the requirement of Section 4 to employ firemen (helpers) on all passenger trains. Section 4 of the Diesel Agreement, and Part B(5) of the Award, respectively read as follows:

“Section 4. A fireman, or a helper, taken from the seniority ranks of the firemen, shall be employed on all locomotives, provided that the term ‘locomotives’ does not include any of the following: * * *.”

“B(5). After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to use firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services), other than in crews designated by the local chairman, pursuant

to the provisions of paragraphs B(2) and B(3) of this Award, except as may be necessary to provide jobs for firemen (helpers) whose employment rights are retained as provided in Parts C and D of this Award; provided that no yard locomotives shall be [112] operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition."

(15) That portion of Part (C) of the Award which deals with the continued employment rights of C(7) firemen reads as follows:

"C(7). Firemen (helpers) with 10 or more years of seniority as of the effective date of this Award, who are not separated from the carrier's payrolls under the provisions of paragraphs C(3) or C(4) of this Award, shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective, except as modified by and subject to the provisions of Part D of this Award, unless and until retired, discharged for cause, or otherwise removed from the carrier's active working lists of firemen (helpers) by natural attrition."

(16) That portion of Part D of the Award which deals with the continued employment rights of C(7) firemen reads as follows:

"D(2). Firemen (helpers) who remain on the active working lists of the carrier under the provisions of paragraphs C(6) and C(7) of this Award shall have the right to work their turn as firemen (helpers) to the extent that positions as firemen (helpers) are available in their respective seniority districts on locomotives of the type to which firemen (helpers) were assigned and in a class of service calling for the service of a fireman (helper) prior to the effective date of this Award; provided, that such firemen (helpers) shall have no right to jobs that the carrier may discontinue pursuant to the provisions of this Award if other employment in

any class of engine service, for which they are qualified, is available to them in their respective seniority districts. Such firemen (helpers) will have their seniority rights, existing as of the effective date of this Award, for promotion in their turn, preserved."

"D(3). Extra lists shall be adjusted and firemen (helpers) shall be furloughed and recalled pursuant to the provisions of rules in effect as of the day before the day this Award becomes effective, as modified by and subject to the provisions of this Award; provided, that the carrier shall not be required to use firemen (helpers) covered by paragraph D(2) of this Award in freight or yard crews, other than in crews designated by the local chairman pursuant to the provisions of [113] paragraphs B(2) and B(3), if the services of such employees are required on the extra list to fill vacancies in crews or positions where firemen (helpers) must be used, as in passenger service or under the provisions of this Award."

"D(4). Firemen (helpers) retained in service under the conditions set forth in Parts C and D of this Award, when assigned to the extra lists for firemen (helpers), shall not be called to fill vacancies in crews in freight and yard service which have not been designated by the local chairmen pursuant to the provisions of paragraphs B(2) and B(3) of this Award if and when their services are required to fill temporary vacancies as locomotive engineers, or temporary vacancies for firemen (helpers) in passenger service, or temporary vacancies for firemen (helpers) in crews designated by the local chairmen as provided in paragraphs B(2) and B(3) of this Award."

(17) The extent to which C(17) firemen retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day the Award became effective has been the subject of numerous interpretations of the Award by Arbitration Board No. 282, as follows:

BLF&E Question No. 43 (Issued June 9, 1964).

“(a) Does a fireman-helper covered by C-6 or C-7 of the Award have the right to remain on or bid in any job as contemplated by the schedule rules that were effective before date of the Award or can the carrier exercise the individual seniority of the employee under the Award.

(b) May the carrier arbitrarily abolish blankable firemen-helper positions, thereby depriving C-6 and C-7 employees from work to which they would otherwise be entitled in accordance with existing schedule rules.”

Answer: “Under the terms of Section 11, Part D(2), the carrier has the right to determine which of the blankable firemen (helper) positions in a seniority district shall be made available to those firemen (helpers) who are covered by Parts C-6 and C-7 and are entitled to work as firemen (helpers). In the event of a decrease in the number of firemen (helpers) positions in freight or yard service due to a decrease in service requirements, [114] C-6 or C-7 firemen (helpers) who are thus displaced may, if there is no other work available for them, exercise seniority to blankable positions which are designated by the carrier.”

BLF&E Question No. 74(a) (Issued September 16, 1964).

“It is the position of certain carriers that they are allowed to “blank” regular assignments on a seniority district to the extent that C-6 and C-7 helpers-firemen are forced to the extra board, or in some instances furloughed, and thereby deprived of a regular job on which they would otherwise be working under the schedule rules and in accordance with their seniority. Is this position of the carriers correct?”

Answer: “If additional extra men are needed on the extra board, the carrier may require C-6 or C-7 men, beginning with the most junior man, to relinquish blank-

able assignments and thereupon be placed on the extra board. C-6 and C-7 firemen may not be furloughed as a result of the application of this Award when the carrier is operating blankable jobs without firemen."

BLF&E Question No. 94 (Issued September 16, 1964).

"May the carrier under the "guise" of designating a blanked assignment force an assigned helper-fireman to the extra board and in turn place a younger helper-fireman displaced from the extra list, on the same blanked assignment, thereby nullifying all existing seniority rules and practices?"

Answer: "C-6, C-7 firemen (helpers) should be used to fill vacancies on a blankable job which is under bulletin during the life of said bulletin."

BLF&E Question No. 102 (Issued September 16, 1964).

"May the Terminal Railroad Association of St. Louis arbitrarily remove a helper-fireman from his assignment after he has commenced work and place said employee on a vetoed, or required assignment, or on a yard locomotive without a deadman control, or without a deadman control in good operating condition, when extra employees are available for service?"

Answer: "This issue is covered by the applicable local rules and is not within the purview of the Award of Arbitration Board 282."

[115] BLF&E Question No. 28 (Issued October 23, 1964).

"May the carrier force a helper-fireman, covered under Paragraphs C-6 or C-7 of the Award, from a blankable assignment to the extra board to cover vacancies on vetoed positions, passenger service, hostling service, instead of hiring additional helper-firemen?"

Answer: "Yes. In connection with this question the attention of the parties is called to the Board's answers to BLF&E Questions #56 and #74(a)."

BLF&E Question No. 31 and No. 52 (Issued October 23, 1964).

Question No. 31: "Is it the intent of the Arbitration Award to set aside the provisions of certain inter-divisional and local mileage agreements (tabulated assignments) requiring the employment of helpers-firemen?"

Question No. 52: "May the carrier arbitrarily set aside existing agreements providing for proration of work between two or more seniority districts?"

Answer: "The answer is "No" to both questions. Whatever percentage of allocation is provided by such agreements will be distributed among the remaining jobs under the Award."

BLF&E Question No. 37 (Issued October 23, 1964).

"The Illinois Central Railroad has made known its intention of omitting the installation of deadman controls on yard locomotives with the ulterior motive in mind of forcing road freight helpers-firemen covered under Paragraph C-7 to such unequipped yard assignments in accordance with the manning requirements of Paragraph B-5. Is such action on the part of the carrier justified under provisions of the Award?"

Answer: "The problem referred to in this question is covered by the answer to BLF&E Question No. 43 in the Interpretations of June 9, 1964."

BLF&E Question No. 42 (Issued October 23, 1964).

"Is it the intent of the Arbitration Award to nullify and make invalid existing guarantee rules on the Chicago and Illinois Midland Railway, which guarantee a helper-fireman the earnings of his assignment if he is used out of his turn and in other service?"

[116] *Answer:* "If a fireman (helper) under emergency conditions is taken off his assignment and used in other service and there is a local rule guaranteeing

earnings of his regular assignment, *such rule is not affected by this Award. It is understood, however, that the fireman (helper) must retain and return to his original assignment.*"

BLF&E Question No. 44 (Issued October 23, 1964).

"Can the carrier under the guise of the Award nullify arrangements or agreements providing for placement of "Fixture" firemen-helpers falling within the provisions of C-6 or C-7?"

Answer: "The Award is not intended to affect such arrangements or agreements or the rights of the parties with respect to their termination."

BLF&E Question No. 54 (Issued October 23, 1964).

"Does Part B of the Award contemplate that the carrier may abolish firemen-helper positions without discontinuing operation of the entire assignment?"

Answer: "(a) The elimination of "jobs" and the creation of new jobs must be handled in conformity with existing collective agreement provisions.

(b) In the posting of interim crew assignment notices under Section II, Part B(3), all assignments that have been discontinued or created during the preceding 3-month period must be included in such notices. For example, a crew assignment was bulletined to operate from A through C to B. The assignment of the fireman on this crew was properly discontinued. Thereupon a new assignment was properly created operating from A to C. A fireman has not thereafter been used from C to B. Under this example, the interim notices should show that the fireman assignment A to B had been discontinued and that a new assignment, A to C, had been created. The operation C to B must also be shown as a separate operation for these purposes.

(c) Temporary vacancies on vetoed jobs must be filled the entire distance of the fireman's assignment."

BLF&E Question No. 57 (Issued October 23, 1964).

"The Cleveland, Cincinnati, Chicago and St. Louis Railway has taken arbitrary action in annulling for one or more days, certain vetoed 5-day yard assignments. The employees contend that such action constitutes the abolishment of a vetoed assignment and, in accordance [117] with the answer as rendered in BLF&E Question No. 6, the local chairmen are immediately entitled to veto another assignment. Is the employees contention correct?"

Answer: "The circumstances under which the annulment of a job constitutes the abolishment of that job are controlled by local agreements. *As stated in the Award, C(6) and C(7) men retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day the Award became effective.*"

BLF&E Question No. 75 (Issued October 23, 1964).

"In view of the interpretation of the Award as rendered in BLF&E Question No. 43, is it the intent of the Award to allow a carrier to change the designation of "blanked" assignments on a day-to-day basis, thereby depriving helpers-firemen of work and contributing further to the already confused conditions of employment which now exist?"

Answer: "Without specific information concerning the facts and applicable local agreements no answer to this question can be given."

BLF&E Question No. 85 (Issued October 23, 1964).

"Is an agreement as negotiated between the employees and a carrier providing for a "guaranteed extra board" for helpers-firemen nullified by provisions of the Arbitration Award? (A.T. & S.F. Proper)"

Answer: "So long as there is extra work for firemen at the point involved in the question, the guarantee remains in effect."

BLF&E Question No. 92 (Issued October 23, 1964).

“May the carrier arbitrarily remove a helper-fireman from a pool freight assignment at an away-from-home terminal and require him to perform service on an extra passenger assignment on his return trip in order to avoid “deadheading” to fill such required position under the schedule rules? (CB&Q)”

Answer: “Under the circumstances involved in this question, the answer is ‘No’.” (Emphasis ours.)

[118]

PART V

Southern Pacific Has Been and Is Using Road Locomotives to Perform Typical Yard Switching Service Without the Locomotive Being Equipped with a Deadman Control, or Without the Locomotive Being Equipped with a Deadman Control in Good Operating Condition, and Without a Fireman (Helper) Being a Member of the Switching Crew.

(1) Southern Pacific operates freight pool trains and local freight trains from Ennis, Texas, through Dallas and Sherman, Texas, to the end of the Southern Pacific's line at Dennison, Texas, where connection is made with other interstate railroads. The distance from Ennis to Dennison, Texas, is 122 miles. A large switching yard known as Miller Yard is operated at Dallas, Texas, and a smaller switching yard is operated at Sherman, Texas. The trains operated from Ennis to Dennison are frequently long trains, sometimes as much as two miles in length.

(2) When the trains reach Miller Yard at Dallas, Texas, it is necessary to switch out the cars destined for Dallas, after which the freight cars destined for Sherman and for Dennison, Texas, and also those to be delivered to connecting carriers at Dennison, must be switched into the train. Similar switching work is performed when the trains reach the yard at Sherman, Texas.

(3) Frequently the cars that must be removed from, or switched into, the trains at the Dallas and Sherman Yards are of such number and gross weight that the switching operations cannot be expeditiously performed by the or-

dinary switching locomotive customarily used in yard operations. On such occasions the road locomotives are used to perform the yard switching operations. The road locomotives when so used are operated by one of the regularly assigned [119] switching crews that are on duty in the yard at the time that the train arrives. The road locomotives are not equipped with a deadman control, and on occasions the yard crew that takes over the control of the road locomotives to perform the yard switching operation has only one man assigned to the cab of the locomotive, namely, the engineer.

(4) The operation of a locomotive in yard switching service not equipped with a deadman control, and without a fireman (helper) being a member of the crew, is specifically prohibited by Part B(5) of the Arbitration Award. Part B(5) reads as follows:

“After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to use firemen (helpers) on other than steam power in any class of freight service (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services), other than in crews designated by the local chairman, pursuant to the provisions of paragraphs B(2) and B(3) of this Award, except as may be necessary to provide jobs for firemen (helpers) whose employment rights are retained as provided in Parts C and D of this Award; *provided that no yard locomotive shall be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition.*” (Emphasis ours.)

(5) The occasions when and the places where road locomotives have been used to perform yard switching service for the purpose of “undressing” and “redressing” freight trains, and the engineers in charge of the locomotives on those occasions when the locomotive was not equipped with a deadman control and a *fireman* was not a member of the switching crew, are as follows:

[120]

Houston & Texas Central Seniority District Miller (Dallas Yard)				Engineer Assigned to Yard Switching Crew Performing Work
Yard Location	Hours of Yard Assignment	Date Occurred	Fireman Available But Not Used	Road Units Used & Train No.
Miller	6:30 a.m. to	8/8/64	A. M. Blount	5737-7478
"	2:30 p.m. to	8/15/64	W. N. Reed	Train No. 5737
"	3:59 p.m. to			449-801-377
"	11:59 p.m.			& 7224
"	11:00 p.m. to	7/27/64	V. R. Blakley	Train No. 257
"	7:00 a.m.			7497-5782
"	11:00 p.m. to	8/3/64	V. R. Blakley	Train No. 7477
"	7:00 a.m.			5737
"	11:59 p.m. to	10/8/64	V. R. Blakley	Train No. 5737
"	7:59 a.m.			355-5503 & 165
"	11:59 p.m. to	9/5/64	F. Loughmiller	Train No. 257
"	7:59 a.m.			7229-816
"				7220-7919
"				Train No. 257

	Sherman, Texas			
Sherman Yard	11:00 p.m. to 7:00 a.m.	8/20/64	H. B. Baskin	949-948 7222 Engr. Tillman
"	11:00 p.m. to 7:00 a.m.	8/27/64	H. B. Baskin	Train No. 257 7419-7228 Engr. Tillman
"	11:00 p.m. to 7:00 a.m.	7/2/64	H. S. Mounts	7222 Train No. 257 376-7206 Engr. Tillman
"	3:00 p.m. to 11:00 p.m.	6/23/64	H. L. Roberts	176-5851 Train No. 257 7208-753 Engr. Hopkins
"	3:00 p.m. to 11:00 p.m.	10/12/64	F. Loughmiller	720 Train No. 257 7444-929 Not Known
"	11:00 p.m. to 7:00 a.m.	6/22/64	B. W. Splawn	720-7237 Train No. 257 Not Known Engr. Tillman

Sherman, Texas—Continued

Yard Location	Hours of Yard Assignment	Date Occurred	Fireman Available But Not Used	Road Units Used & Train No.	Engineer Assigned to Yard Switching Crew Performing Work
[121]					
Sherman Yard	3:00 p.m. to 11:00 p.m.	7/21/64	W. M. Wright	Train No. 257	Not Known
"	3:00 p.m. to 11:00 p.m.	7/7/64	E. W. Mangan	Train No. 257	Not Known
"	11:00 p.m. to 7:00 a.m.	7/28/64	J. B. Miller	5504-5503 7205	Engr. Tillman
"	11:00 p.m. to 7:00 a.m.	6/30/64	A. M. Blount	Train No. 257 376/550 170-7206	Engr. Tillman
"	11:00 p.m. to 7:00 a.m.	7/9/64	A. M. Blount	Train No. 257 354-5859- 173-5857-7205	Engr. Tillman
"	11:00 p.m. to 7:00 a.m.	7/23/64	H. B. Martin	Train No. 257	Engr. Tillman
"	11:00 p.m. to 7:00 a.m.	6/25/64	L. Cooksey	Train No. 257	Engr. Tillman

(6) Southern Pacific has also used at various yards and on numerous occasions yard switching locomotives to perform yard switching service which were equipped with a deadman control but the control was not operative at the beginning of the shift, or it became inoperative during the shift, yet the locomotive was used throughout the shift and a fireman (helper) was not a member of the yard crew operating the locomotive.

(7) The using of a locomotive in yard switching operations with a deadman control that is not in good operating condition, by a yard crew which does not include a fireman-helper as a member of the crew, is prohibited by Part B(5) of the Arbitration Award, and is contrary to the Board's interpretation of the Award made in answer to [122] BLF&E Question No. 10, on June 9, 1964. Question No. 10 and the Board's answer are as follows:

BLF&E Question No. 10

"Is the employment of a helper-fireman required on a yard assignment if the deadman control on a single manner yard locomotive becomes inoperative after a shift has commenced?"

Answer: "If the deadman control on a single manned yard locomotive becomes inoperative after a shift has commenced, this locomotive should not be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition."

(8) Part B(5) of the Arbitration Award has been violated in the manner described, at the following times and places:

Houston, East & West Texas Seniority District

Yard Location	Hours of Yard Assignment	Date of Operation	Engineer Operating Yard Job	Diesel Unit Operated	Fireman Available But Not Used
Shreveport, Louisiana	3:00 p.m. to 11:00 p.m.	June 23, 1964	T. W. Brown	161	C. M. Luce
"	3:00 p.m. to 11:00 p.m.	June 24, 1964	J. D. Russell	5885 and 161	C. H. Barfield
"	3:00 p.m. to 11:00 p.m.	June 25, 1964	J. D. Russell	5885 and 161	C. H. Barfield

Houston and Texas Central Seniority District

Houston Terminal	7:30 a.m. to 3:30 p.m.	June 17, 1964	M. J. Broderick	170	W. B. Rutland
Hearne Yard	3:00 p.m. to 11:00 p.m.	Aug. 17, 1964	Mooney	179	L. H. Whitacre
"	11:00 p.m. to 3:00 p.m.	Aug. 19, 1964	Mooney	179	L. H. Whitacre

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Hearne	3:00 p.m. to	Aug. 18, 1964	Mooney	179	L. H. Whitacre
Yard	11:00 p.m.				
"	3:00 p.m. to	Aug. 21, 1964	Mooney	179	L. H. Whitacre
"	11:00 p.m.				
"	3:00 p.m. to	Aug. 22, 1964	Mooney	179	V. R. Blakley
"	11:00 p.m.				
"	3:00 p.m. to	Aug. 24, 1964	Mooney	179	V. R. Blakley
"	11:00 p.m.				
"	7:00 a.m. to	Aug. 23, 1964	McCarver	179	A. R. Goodman
"	3:00 p.m.				
"	7:00 a.m. to	Aug. 25, 1964	McCarver	179	A. R. Goodman
"	3:00 p.m.				
"	3:00 p.m. to	Aug. 20, 1964	Mooney	179	F. Loughmiller
"	11:00 p.m.				

PART VI

Southern Pacific, After Listing Yard Switching Assignments as Blankable under Part B of the Arbitration Award and Thereafter Blanking such Assignments and Operating Them Without a Fireman (Helper) Being a Member of the Switching Crew, Has Required and Is Requiring Ground Members of the Switching Crew to Ride in the Cab of the Switching Locomotive and Perform the Duties Formerly Performed by the Fireman, Contrary to the Intent and the Purpose of Arbitration Award.

(1) Southern Pacific operates a large switching yard at Dallas, Texas, known as Miller Yard, where an average of from thirteen to fifteen yard switching assignments are operated in the course of a twenty-four hour period. Two of the switching assignments in Miller Yard are known as job No. 202 and job. No. 205.

(2) Jobs Nos. 202 and 205 were listed by Southern Pacific as [124] blankable assignments pursuant to Part B of the Arbitration Award, and since July 1, 1964, they have generally been operated without a fireman (helper) being a member of the crews. Nevertheless, on numerous occasions from July 1, 1964, to the present time Southern Pacific has required a ground member of the switching crew, a switchman, to ride in the cab of the yard locomotives on jobs No. 202 and No. 205, and other switching jobs also, during the switchman's tour of duty for the purpose of performing the duties formerly performed by the fireman, which duties consist of receiving signals from other members of the ground crew for the purpose of transmitting such signals to the engineer when the latter is unable to observe the ground members while they are performing their normal duties, and the switchman also maintains a lookout so as to inform the engineer of the presence of other yard locomotives and of trains in the yard when the engineer is unable to observe the presence and movements of other locomotives and trains from his side of the locomotive cab.

(3) Southern Pacific has required switchmen to perform the duties formerly performed by the firemen on switching jobs No. 202 and No. 205, and also other switching jobs, on many occasions, among which are the following:

Houston and Texas Central Seniority District

Yard Location	Hours of Yard Assignment	Date Occurred	Fireman Available For Work But Not Used
Miller (Dallas)	11:59 p.m. to 7:59 a.m.	July 24, 1964	H. S. Mounts
" "	11:59 p.m. to 7:59 a.m.	July 31, 1964	H. S. Mounts
" "	3:59 p.m. to 11:59 p.m.	Sept. 25, 1964	W. N. Reed

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Miller (Dallas)	3:59 p.m. to 11:59 p.m.	Sept. 26, 1964	W. N. Reed
" "	3:00 p.m. to 11:00 p.m. # 202	Oct. 8, 1964	A. R. Goodman
" "	3:59 p.m. to 11:59 p.m.	Oct. 10, 1964	A. R. Goodman
" "	3:59 p.m. to 11:59 p.m.	Oct. 30, 1964	L. H. Whitacre
" "	3:59 p.m. to 11:59 p.m.	Nov. 21, 1964	W. N. Reed
" "	3:59 p.m. to 11:59 p.m.	Dec. 4, 1964	V. R. Blakley
" "	3:59 p.m. to 11:59 p.m.	Dec. 5, 1964	A. M. Blount
" "	11:00 p.m. to 7:00 a.m.	Oct. 6, 1964	F. Loughmiller
" "	11:00 p.m. to 7:00 a.m.	Oct. 7, 1964	F. Loughmiller

(4) The practice of using a switchman to ride in the cab of a switching locomotive to perform the duties of transmitting signals and maintaining a lookout to avoid collisions or running over other employees working in the yard—the work formerly performed by firemen—is being required or permitted by Southern Pacific in its switching yard at San Antonio, Texas.

(5) Arbitration Board No. 282 has interpreted its Award, in answering BLF&E Questions No. 32, No. 86 and No. 56, as not authorizing or contemplating that firemen's yard assignments would be blanked by a carrier and the carrier thereafter require or permit employees from other crafts to perform the duties that were normally performed by the fireman prior to the effective date of the Award.

[126] BLF&E Question No. 32 and the Board's Answer read as follows:

BLF&E Question No. 32

"May the carrier, as a method of operation in road freight and yard service, place a yardman or brakeman on the left side of the locomotive cab to perform lookout or pass signals; in effect performing duties formerly assigned to a helper-fireman?"

Answer: "It was not the intent of the Award that the removal of firemen-helpers from yard engines should be followed by the substitution of other yard service employees in the cab to perform signal-passing and lookout functions formerly performed exclusively by firemen-helpers. If, however, other yard service employees formerly shared signal-passing and lookout functions in the cab with firemen-helpers, they may now continue to perform such functions."

(6) BLF&E Question No. 86 and the Board's Answer read as follows:

BLF&E Question No. 86

"Is it the intent of the Award to allow the carrier to place a switchman, brakeman, company official or other employee on the left side of the locomotive cab to perform lookout duties, pass signals, or correct engine malfunction, said employees having been formerly stationed at another point on the train or in normal operation, not present at all?"

Answer: "This question is controlled by the principle expressed in the Board's answer to BLF&E Question No. 32. As the Board stated in its Opinion:

'Moreover, we wish to emphasize that our conclusions are not based on the assumption that members of any other craft will henceforth perform duties within the exclusive jurisdiction of firemen. Head brakemen will, as in the past, continue to perform, in addition to their other duties, forward lookout functions on the firemen's side of the engine cab. Indeed, in road freight operations there will be, with only infrequent exceptions a brakeman in the cab with the engineer at all times. In neither road freight nor yard service, however, do we contemplate that brakemen will be asked or expected to perform mechanical repairs and inspections formerly assigned firemen. To the extent that these functions continue, they will be performed in the manner previously described, either by the engineer or by shop maintenance employees.' "

[127] (7) BLF&E Question No. 56 and the Board's Answer read as follows:

BLF&E Question No. 56

"Is it permissible to call an employee from another craft to perform duties of a fireman-helper when it is necessary that such fireman-helper position be filled? See Question No. 32."

Answer: "Extra lists for firemen-helpers should be maintained in conformity with the controlling rules of the collective agreement so as to insure a force of extra firemen-helpers adequate to meet normal requirements. In the event of an unforeseen emergency situation a carrier may follow past practices under these circumstances respecting the filling of vacancies for firemen which is required under the Award and existing agreements."

(8) Prior to the effective date of the Award, no ground member of a yard switching crew working in Miller Yard, or on any part of the carrier's lines known this affiant, has ever been ordered by the carrier or permitted to ride in the cab of a locomotive engaged in yard switching opera-

tions for the purpose of performing the duties of a fireman (helper).

PART VII

Southern Pacific Has Been and is Operating Locomotives in Combination Service Consisting of Local Freight and Switching Operations Without a Fireman (Helper) Being a Member of the Crew and without the Fireman's Assignment Being Listed by the Carrier as a Blankable Assignment pursuant to Part B of the Arbitration Award.

(1) Southern Pacific maintains at Beaumont, Texas, a terminal and yard facility on the main line of its railroad. Twenty-eight miles east of Beaumont the railroad passes through a city called Orange, Texas. Orange is not a terminal point on the Southern Pacific Railroad, nor is a switching yard maintained at that location, but [128] numerous industries are located at Orange, including a large DuPont industrial plant which require daily and extensive switching service.

(2) The locomotives employed in the combination service referred to in paragraph 1, *supra*, are commonly referred to as "Orange Switchers", and they proceed from the terminal at Beaumont with a train of freight cars and proceed to Orange where the cars are delivered to the various industrial plants to which they are destined, and other freight cars, both loaded and empty, are collected at the industrial sites by the Orange Switchers and are either delivered to the transfer tracks of another railroad that operates through Orange or the cars are taken to Beaumont at the end of the switcher's tour of duty.

(3) One of the Orange switchers is known as switcher No. 2. It operates as a freight paying local-freight rates of pay and operates six days a week. It was operated during the year 1964 throughout the months of April and May, August and September, and the months of December, 1964, and January, 1965. During the two-month periods that Orange Switcher No. 2 was not operated during the year 1964 the same service was performed by another switcher operated by The Missouri Pacific Railroad. South-

ern Pacific and The Missouri Pacific Railroad have agreed to furnish the switcher service needed at Orange for alternate two-month periods.

(4) Orange switcher No. 2 was not listed by Southern Pacific as a blankable assignment when it served upon the Brotherhood's local chairman on September 3, 1964, a supplemental list of newly established assignments which did not, in the carrier's judgment, require the services of a fireman, as contemplated by Part B(3) of the Award.

[129] (5) The services of a fireman (helper) as a member of the crew operating Orange Switcher No. 2 were required by the rules in effect on the day preceding the effective date of the Award, and the services of a fireman are required by the terms of the Arbitration Award, but from September 3, 1964, to the present time during such period as Orange Switcher No. 2 has been operated, Southern Pacific has neglected and failed during all or most of said period to assign a fireman to the crew operating the said switcher.

PART VIII

Southern Pacific Disregards the Employment Rights of C(7) Firemen Assigned to Freight Pool Service, as Established by Rules in Effect on the Day Preceding the Day the Arbitration Award Became Effective, by Calling the Junior Fireman Assigned to a Firemen's Freight Pool List to Fill an Emergency Assignment Instead of Calling the Fireman Who Is Rested and Stands in First Position on The List to Be Called to Work, and the Carrier Purports to Justify Such Action by Claiming that the Arbitration Award Authorizes the Carrier to Disregard the Employment Rights of C(7) Firemen as Established by the Rules.

(1) For twenty years and more the firemen's agreement in effect on the Texas and Louisiana lines of the Southern Pacific Railroad has contained an employment rule which governs the right of the carrier to require firemen regularly assigned to a freight pool list and working in such pool to temporarily leave such work for the purpose of filling an emergency fireman's assignment in another class of service for one or more days when all of the men on the firemen's

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(1) For twenty years and more the firemen's agreement in effect on the Texas and Louisiana lines of the Southern Pacific Railroad has contained an employment rule which governs the right of the carrier to require firemen regularly assigned to a freight pool list and working in such pool to temporarily leave such work for the purpose of filling an emergency fireman's assignment in another class of service for one or more days when all of the men on the firemen's

extra list are currently employed or not available for service and the emergency assignment must be filled from some other source. [130] When the emergency assignment has been satisfied, the pool fireman returns to the freight pool and takes a position at the bottom of the freight pool list.

(2) The rule in the firemen's agreement which established the foregoing procedure and which has been enforced by Southern Pacific throughout its Texas and Louisiana lines for a period of many years prior to May, 1964, reads as follows:

"When firemen who are assigned to pool freight service, are used in emergency, for yard service or in road service off their assigned territory, they will be called on a first-in, first-out basis and will take their turn with them. On being released from such emergency service, they will be placed at the foot of the pool freight list in regular order."

(3) The rules that were in effect on the day preceding the effective date of the Arbitration Award and for many years prior thereto governing the adjustment of the firemen's extra list, by increasing or decreasing the size of the extra list, provides that the extra list shall be adjusted on the 3rd, the 13th, and the 23rd day of each month. When the firemen on the extra list are all occupied and the need for additional firemen to fill emergency assignments arises between the adjusting dates, the emergency fireman is obtained by calling a fireman regularly assigned to a freight pool list in the manner prescribed by the rule quoted in paragraph (2), *supra*. The rule governing the adjustment of the firemen's extra lists on the 3rd, the 13th, and the 23rd of the month reads as follows:

"For the purpose of adjusting lists, it is agreed a mileage check will be made on ten-day periods; namely, 1st-10th, 11th-20th, and 21st-30th of each calendar month. Adjustments will be made on the 3rd, 13th and 23rd of each calendar month, using the total mileage or equivalent thereof accumulated in the preceding 10-day check period and will be multiplied by three and

divided by the number of firemen on the list and the result of [131] such will determine the average mileage for the purpose of making such adjustments as may be necessary. It is understood that no adjustment of the extra list will be made until the average mileage falls below the minimum of 2800 miles or is in excess of the maximum of 3800 miles. In the event the average is less than the equivalent of 2800 miles or more than the equivalent of 3800, adjustment of miles is required, by taking the total miles made by the board during the ten-day checking period and multiplying it by three and dividing the total by 3200 miles. The number of firemen on the extra list shall then be decreased or increased as the case may be to the nearest whole number 3200 as obtained, by providing this can be done without reducing the average below 2800 miles. In event the 3rd, 13th, or 23rd should fall on Sunday or holiday, it is agreed that check will be made on the following date or preceding date for the convenience of the parties. The 31st day of a calendar month will not be used to adjust lists. Mileage accumulated on the 31st day of the seven calendar months in a year will be totalled in the individual firemen's accumulated mileage. The total mileage, or equivalent thereof, accumulated in the ten-day checking period, as referred to above, will be multiplied by 3 and divided by the number of firemen on the list and the results of such will determine the average miles for the purpose of making such adjustments as may be necessary. The Local Chairman will see that the mileage regulations are complied with."

(4) Beginning in May, 1964, Southern Pacific ceased complying with the rule governing the use of firemen regularly assigned to freight pool lists to fill emergency firemen's assignments when the extra board is exhausted, as quoted in paragraph (2), *supra*, and has at all times since May, 1964, called the most junior fireman assigned to a freight pool board who is at that time at the terminal and requires him to fill the emergency assignment regardless of whether such fireman stood first-out on the pool list

to work, or was the last pool fireman to report in from work, or stood somewhere in between on the pool list.

[132] (5) This arbitrary practice of disregarding the rules and practices that were in effect on the day preceding the effective date of the Arbitration Award and long prior thereto, has been and is enforced on all of the seniority districts comprising Southern Pacific's Texas and Louisiana lines, and is illustrated by the following list of occasions and circumstances which have occurred on the Houston and Texas Central Seniority District.

Houston & Texas Central Seniority District				
Class of Service and Place where Emergency Firemen Were Used	Name of Fireman Used Improperly	Standing on List When Called	Date Used	Fireman 1st Out, Should Have Been Used
Yard Assignment at Hearne	A. M. Blount	8th out	May 26, 1964	L. H. Whitacre
Yard Assignment at Ft. Worth	R. J. Morgan	10th out	May 27, 1964	H. L. Roberts
Hostler at Ennis	J. B. Miller	4th out	May 28, 1964	H. L. Roberts
Yard Assignment at Ft. Worth	A. M. Blount	10th out	May 28, 1964	H. L. Roberts
Yard Assignment at Ennis	W. N. Reed	7th out	May 29, 1964	L. R. Hobbs
Hostler at Ennis	J. B. Miller	6th out	May 30, 1964	B. W. Splawn
Hostler at Ennis	W. N. Reed	2nd out	June 9, 1964	H. B. Baskin
Hostler at Ennis	W. N. Reed	3rd out	June 16, 1964	H. L. Roberts
Hostler at Ennis	J. C. Ray	6th out	June 16, 1964	B. W. Splawn

Class of Service and Place Where Emergency Firemen Were Used	Name of Fireman Used Improperly	Standing on List When Called	Date Used	Fireman 1st Out, Should Have Been Used
Hostler at Ennis	D. C. Colston	6th out	June 20, 1964	H. B. Baskin
Hostler at Ennis	D. C. Colston	6th out	June 21, 1964	H. L. Roberts
Road Assignment	D. C. Colston	5th out	June 22, 1964	F. Loughmiller
# 54 at Ennis	W. N. Reed	2nd out	June 23, 1964	D. C. Colston
Road Assignment	R. J. Morgan	6th out	Aug. 2, 1964	H. S. Martin
# 1/337 at Hearn				
Hostler at Ennis	L. H. Whitacre	7th out	July 31, 1964	H. L. Roberts
[133]	R. J. Morgan	9th out	Aug. 3, 1964	H. L. Roberts
Hostler at Ennis				
Road Assignment				
# 54 at Ennis				

(6) Southern Pacific explains and excuses its arbitrary refusal to employ C(7) firemen in accordance with the rules that were in effect on the day preceding the effective date of the Arbitration Award by asserting that the Award authorizes it to disregard such rules and the established practices thereunder.

PART IX

Southern Pacific Has Been and Is Disregarding the Firemen's Employment Rules that Were in Effect on the Day Preceding the Effective Date of the Award, Which Rules Were Established by a National Agreement Dated May 23, 1952, (Later Amended October 14, 1955) Between the Brotherhood and the Major Railroads of the Country, Including Southern Pacific, Under Which the 5-Day Work Week in Yard Switching Operations Was Established, and Southern Pacific Disregards Such Rules on the Pretext and Explanation that the Arbitration Award Authorizes Southern Pacific to Violate the Agreement.

(1) On May 23, 1952, the Brotherhood entered into a nationwide collective agreement with the major railroads of the country, including Southern Pacific, and later amended the agreement on October 14, 1955, under which a 5-day work week for firemen employed in yard switching service was established, and the agreement further provides that if firemen who are regularly employed in yard service work more than five straight-time eight-hour shifts in a seven-day week they shall be paid [134] at one and one-half times the straight time rate for such work as is in excess of the 5-day week. The provisions of the agreement to this effect read as follows:

"Section 1(a) Such carrier as has not heretofore done so will establish for engineer and firemen, and helpers on other than steam power, in yard, transfer, and belt line service, or combinations thereof, and hostlers and hostler helpers, represented by the Brotherhood of Locomotive Firemen and Enginemen, a work week of five basic days. Except as otherwise provided in this ARTICLE 3, the work week will con-

sist of five consecutive days with two days off in each seven. The foregoing work week rule is subject to all other provisions of this agreement.

* * * * *

“Section 5(b) Regular assigned yard and hostling service employees worked as such more than five straight-time eight-hour shifts in a work week shall be paid one and one-half times the basic straight-time rate for such excess work except (exceptions not relevant here):”

(2) The agreement of May 23, 1952, as subsequently amended, was in effect on the Southern Pacific Railroad on the day preceding the effective date of the Arbitration Award, and it has been in effect at all times since.

(3) Beginning in July, 1964, and thereafter, Southern Pacific has taken the position that the Arbitration Award abrogated the National 5-Day Work-week Agreement, with the result that Southern Pacific from time to time has been and is requesting firemen who are regularly assigned to yard switching service to work in excess of five days per week but Southern Pacific declines to pay such employees at one and one-half times the regular rate for services thus rendered in excess of five days per week.

(4) Southern Pacific's refusal to abide by the National [135] 5-Day Work-week Agreement is illustrated by the following examples:

Houston & Texas Central Seniority District

Yard Location	Fireman Used	Yard Job Held Regularly	Off Days Regular Assignment	Total Days Worked
Ennis and Hearne, Tex.	D. R. Bellew	No. 92, 3:59 p.m. to 11:59 p.m.	Monday & Tuesday	Wednesday, July 29, 1964 thru Monday, Aug. 3, 1964

Morgan, Louisiana and Texas Seniority District

New Orleans, Louisiana	W. J. Adams	No. 102	Saturday & Sunday	Monday, Sept. 28, 1964 thru Friday, October 2, 1964, and on Sunday October 4, 1964
"	G. H. Stoker	No. 307 11:30 p.m. to 7:30 a.m.	Friday & Saturday	Sunday, Oct. 4, 1964, thru Thursday, Oct. 8, 1964, and again on Sat- urday, Oct. 10, 1964
"	M. F. Bainsfather	No. 105	Saturday & Sunday	Monday, Sept. 28, 1964 thru Saturday, Oct. 3, 1964

(5) The practice on the part of Southern Pacific of requiring C(7) firemen regularly assigned to yard switching jobs to work in excess of five days per week and refusing to pay them at one and one-half times the basic straight-time rate for the time worked in excess of five days per week prevails on the six seniority districts comprising [136] Southern Pacific's Texas and Louisiana lines, and is excused and justified by Southern Pacific with the explanation that such practice is authorized by the Arbitration Award.

Further, affiant saith not.

ALLEN C. BYRON.

STATE OF TEXAS,
County of Harris, ss:

Subscribed and sworn to before me this 27th day of
January, 1964.

C. A. RAYMOND,
Notary Public.

My commission expires 6-30-1965.

AFFIDAVIT OF E. S. LOHRKE IN OPPOSITION TO MOTION OF
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
FOR SUPPLEMENTAL RELIEF.

[Filed March 18, 1965]

E. S. Lohrke, being first duly sworn, deposes and says:

1. I am an Assistant Manager of Personnel for the Southern Pacific Company, Texas and Louisiana Lines (hereinafter sometimes called the carrier), and have held that position since January 1, 1953, except for the period from August 31, 1959 to April 15, 1962. I am the Assistant Manager of Personnel most directly connected with the carrier's implementation of Section II of Arbitration Award No. 282, the portion of Award 282 which concerns firemen. Mr. L. C. Albert, Manager of Personnel, is my immediate superior.

2. This affidavit is made in response to the affidavit of Allen C. Byron in support of the Motion of the Brotherhood of Locomotive Firemen and Enginemen (hereinafter sometimes called the BLF&E) for Supplemental Relief against the Southern Pacific Company, J. E. Wolfe, and E. H. Hallman. References to the carrier in this affidavit pertain only to the Texas and Louisiana Lines of the Southern Pacific Company and not to any other property owned by the Southern Pacific. Except as otherwise indicated, statements herein are based on my personal knowledge of the facts or on the carrier's records. I either have reviewed such records myself, or, where that was not possible in the short time which has elapsed since I first received a copy of the Byron affidavit, have had them reviewed by other employees of the carrier whom I consider reliable.

[2] 3. Mr. J. E. Wolfe, one of the individuals named in the BLF&E motion, is Chairman of the National Railway Labor Conference and a carrier member of Arbitration Board No. 282. Mr. E. H. Hallman, the second individual named in the BLF&E motion, is Chairman of the Western Carriers' Conference Committee. The carrier has sought

and obtained advice from time to time from the National Railway Labor Conference with respect to the interpretation and application of Award 282 and along with numerous other carriers was represented by the Western Carriers' Conference Committee in the national negotiations which led to the enactment of Public Law 88-108. However, neither Mr. Wolfe nor Mr. Hallman is an official of, or is otherwise responsible for the actions of, the carrier.

4. As indicated in the following Parts of this affidavit, contrary to paragraph (C) on page 2 of the Byron affidavit, the carrier is not violating Arbitration Award No. 282 or interpretations thereof by the Arbitration Board. In implementing the Award, the carrier has attempted to be scrupulously fair to its employees; indeed, for that reason it has exceeded its obligations under the Award in important respects mentioned in Parts I and III of this affidavit.

5. Also as indicated in the following parts of this affidavit, many of the claims made in the Byron affidavit depend on interpretations of the Award by the BLF&E which the carrier believes are entirely erroneous. In order to settle the parties' disputes as to the meaning of the Award, the carrier has submitted to the Arbitration Board the series of questions attached hereto as Exhibit A. I am informed and believe that the Board will meet to decide such questions on April 13, 1965.¹ Of course, the carrier stands ready and willing to abide by the Board's decisions, whomever they may favor.

[3] 6. Also as indicated in the following Parts of this affidavit, many of the alleged claims and grievances mentioned in the Byron affidavit have not been processed in accordance with the parties' contractual claim and grievance procedure. That procedure and the time limits which apply to each of the steps involved are as follows:

¹ I understand that counsel for the carrier has proposed to counsel for the BLF&E that, for the purpose of resolving all disputes between the parties as to the meaning of the Award, the parties join in a joint submission of common questions, or if common questions cannot be agreed upon, a joint submission of all questions prepared by either side, in which circumstances the carrier would withdraw the questions already submitted to the Board. (See letter from Francis M. Shea to Milton Kramer, dated March 15, 1965, attached hereto as Exhibit B.)

(i) Ordinarily, claims are made initially on an employee's "Time Return and Delay Report," submitted to the carrier's timekeepers. (An example of a Time Return and Delay Report is attached hereto as Exhibit C-1.) In any event, a claim or grievance must be presented in writing within sixty days from the date of the occurrence on which it is based; otherwise it is barred.

(ii) Claims that are not allowed ordinarily are disallowed with a "Time Correction Notice," issued by the timekeeper over the Superintendent's signature. (An example of a Time Correction Notice is attached hereto as Exhibit C-2.) In any event, the carrier has sixty days from the date on which a claim is made to disallow it and send notice thereof to the employee or his representative; otherwise, the claim is considered valid and must be settled accordingly.

(iii) The claim then may be appealed by the employee's Local Chairman to the Superintendent of the employee's seniority district, within sixty days from receipt of the notice of disallowance; otherwise, the matter is considered closed. (An example of such an appeal is attached hereto as Exhibit C-3.)

(iv) The appeal then may be disallowed and notice of disallowance given to the Local Chairman within sixty days from the date of the appeal; otherwise, the claim is considered valid and must be settled accordingly. (An example of such a notice is attached hereto as Exhibit C-4.)

(v) The Superintendent then must be notified by the Local Chairman that his decision is rejected, and the claim must be appealed by the General Chairman to the carrier's Manager of Personnel, all within sixty days from receipt of the Superintendent's decision; [4] otherwise, the matter is considered closed. (An example of a notice that the Superintendent's decision is rejected is attached hereto as Exhibit C-5; an example of an appeal to the Manager of Personnel is attached hereto as Exhibit C-6.)

(vi) The Manager of Personnel then must notify the General Chairman of his decision within sixty days from the date of appeal; otherwise, the claim is considered valid

and must be settled accordingly. (An example of such a decision is attached hereto as Exhibit C-7.)

(vii) The General Chairman then must notify the Manager of Personnel that his decision is not accepted within sixty days after written notice of the decision; otherwise, the decision is final and binding. (An example of such notice is attached as Exhibit C-8.)

(viii) The General Chairman then must list or "docket" the claim for conference with the Manager of Personnel. Most claims and grievances not disposed of at an earlier stage in the procedure are settled in such conferences. Following the conference, the Manager of Personnel notifies the General Chairman in writing of his final decision.

(ix) Thereafter, proceedings may be instituted "before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved." Such proceedings must be commenced within six months from the date of the decision of the Manager of Personnel, following the conference, or such extensions of that period as are agreed to by the parties. Otherwise, the claim is barred. Cases which otherwise would be submitted to the National Railroad Adjustment Board (43 U.S.C. § 153) may be and always are submitted, with consent of the parties, to a special board of adjustment established by contract between the BLF&E and the carrier. Unlike the National Railroad Adjustment Board, the parties' special adjustment board keeps its docket current.

7. The claim and grievance procedure just described, and the applicable time limitations, are prescribed by the following provisions from section 17 of the Washington Agreement of August 11, 1948, incorporated in the contracts between the BLF&E and the carrier, as "construed" by an agreement between the parties entered into on November 2, 1949:

[5] Time Limit on Claims

[Here appeared paragraphs (a) through (f) of section 17 of the agreement which is printed at pp. 264-268, *infra*.]

* * * * *

Agreement of November 2, 1949

[Here appeared the text of the agreement which is printed at p. 288, *infra*.]

* * * * *

[6] 8. The applicability of the claim and grievance procedure to claims and grievances involving Award 282 has been recognized by the BLF&E, expressly in a letter dated May 20, 1964 from J. R. Lewis, Acting General Chairman, BLF&E, to L. C. Albert, Manager of Personnel (Exhibit D hereto), and impliedly in processing many such claims thereunder (see, e.g., paragraphs 12(c), 23(a), 35, 39, 45, 52 and 57 of this affidavit). The Brotherhood of Locomotive Engineers (hereinafter called the BLE), which also was a party to the Washington Agreement of August 11, 1948, and to which a number of the carrier's firemen belong, likewise recognizes the applicability of the claim and grievance procedure to claims and grievances involving Award 282; it is actively progressing such claims on behalf of its firemen members in accordance with that procedure. (See, e.g., paragraphs 12(a) and 23(b) of this affidavit.) Part A(1) of Section II of Award 282 provided that "all agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award." Nothing in the Award purported to modify existing grievance procedures or to exclude therefrom claims and grievances of individual employees allegedly arising from an application of the Award. If there can be any genuine doubt on that score, it will be resolved when the Arbitration Board answers the questions recently submitted to it by the carrier. (See Question No. 5 in Exhibit A hereto.)

[7]

PART I

Extra Boards

9. The claim made in Part I of the Byron affidavit (pages 2-65) is that the carrier had violated Award 282 by not calling "firemen from the extra boards to operate *blanked*

assignments," when, in consequence, available men on the extra boards "lose" a day or more of work. (Byron aff., p. 2.) It is not true that the carrier's practices in that connection have violated the Award.

10. The carrier's relevant practices are as follows:

(a) In accordance with Part D(3) of Section II of Award 282,² the carrier's extra lists are adjusted and firemen are assigned to them pursuant to the provisions of rules in effect as of the day preceding the effective date of the Award. Those rules are quoted in paragraph (3) on pages 130-131 of the Byron affidavit. They require adjustment of the size of each extra board three times each month if the average mileage worked by men on the board during the preceding ten day period is less than 2800 miles or more than 3800 miles. Since the effective date of Award 282, the number of men assigned to the extra boards has never exceeded the number prescribed by those rules.

(b) Under provisions in the parties' contracts antedating the Award, firemen assigned to the extra lists were "run first-in and first-out of all division terminals where extra lists [were] maintained, filling all vacancies in passenger service, freight service, helper service, yard service, or other service which extra men usually perform." Since the Award, the carrier has continued to [8] call men from the extra boards to fill all such vacancies in so-called "non-blankable" assignments—assignments which the carrier cannot eliminate, including passenger, hostling, and "vetoed" assignments and assignments on yard locomotives not equipped with deadman controls. Further, the carrier has continued to call men from the extra boards to fill all such vacancies in so-called "blankable" assign-

²Part D(3) provides: "Extra lists shall be adjusted and firemen (helpers) shall be furloughed and recalled pursuant to the provisions of rules in effect as of the day before the day this Award becomes effective, as modified by and subject to the provisions of this Award; provided, that the carrier shall not be required to use firemen (helpers) covered by paragraph D(2) of this Award in freight or yard crews, other than in crews designated by the local chairmen pursuant to the provisions of paragraphs B(2) and B(3) if the services of such employees are required on the extra list to fill vacancies in crews or positions where firemen (helpers) must be used, as in passenger service or under the provisions of this Award."

ments—assignments which the carrier may eliminate eventually but to which firemen still are regularly assigned under the job protection provisions of the Award—except when the extra board is exhausted (i.e., when there are no men assigned to the board who are available and rested.)³ The carrier uses such men to fill “blankable” assignments whether or not the men otherwise would lose a day or more of work. Thus, the carrier’s practices in this regard exceed its obligations under the answers of Arbitration Board No. 282 to BLF&E Questions 60(b) and 76, quoted on pages 61-62 of the Byron affidavit, under which the carrier is required to call men from the extra boards to fill temporary vacancies in “blankable” assignments only “if the refusal to so call would result in the [men’s] losing a day or more of work.”⁴

[9] (c) On the other hand, as is claimed in the Byron affidavit, men on the extra boards are not used in “blanked” positions—that is, blankable assignments which have been discontinued permanently pursuant to the Award and to which firemen no longer are regularly assigned. The carrier’s officials believe that this practice complies in all respects with the requirements of Award 282. Specifically, it is the carrier’s understanding that the answers of Arbitration Board 282 to BLF&E Questions 60(b) and 76, quoted in paragraphs (10) and (11) in Part I of the Byron affidavit, were intended to require a carrier to use men on the extra boards to fill temporary vacancies in “blankable” (as distinguished from “blanked”) assign-

³ Under the answers of Arbitration Board 282 to BLF&E Questions 27 and 29, quoted on page 64 of the Byron affidavit, “regularly assigned firemen (helpers) in C-6 and C-7 categories need not be called to fill blankable vacancies when the extra list is exhausted.”

⁴ Unless there are no available and rested firemen on the extra board, the carrier also calls men from the extra boards for “extra assignments”—unscheduled one day runs. Under the answer of Board 282 to BLF&E Question 113 (which answer incorporates by reference the Board’s answers to BLF&E Questions 27 and 29, quoted in note 2, *supra*), the carrier is not required to call a fireman for such an assignment if the extra board is exhausted; and under the answer of Board 282 to BLF&E Question 79, the carrier is obligated to call a man from the extra board for such an assignment only if not calling would “cause [him] to lose a day or more of work.”

ments when such men otherwise would "lose" a day of work, but were not intended to require a carrier to assign men on the extra boards to permanently discontinued positions under any circumstances. Such "blanked assignments" are no longer assignments at all. To confirm this understanding, the carrier has submitted the following question to the Board (see Question No. 1(c), in Exhibit A):

"It is the carrier's understanding that a blankable fireman (helper) position which has been blanked by the carrier may remain blanked and need not be made available to a C-6 or C-7 fireman (helper) assigned to the extra list or extra board. Is the carrier's understanding correct?"

11. To require the carrier to call men from the extra boards to fill blanked positions would have at least two consequences not contemplated by Award 282: first, any such requirement would nullify the parties' existing agreements as regards so-called guaranteed boards, and second, it eventually would force many or all C(7) firemen regularly assigned to "blankable" positions off their regular jobs and onto the extra boards.

(a) The contracts between the BLF&E and the carrier guarantee a minimum amount of work (2800 miles) for firemen on seven very small extra boards at outlying points. The contracts do not provide any [10] such guarantee with respect to the carrier's other extra boards; except on the six guaranteed boards, protection against insufficient work is provided only by the mileage rules referred to in paragraph 9(a) above, under which the size of the boards is adjusted frequently to reflect the volume of work. To require the carrier to call men to fill blanked positions whenever they otherwise would lose a day of work would, in effect, guarantee the men on the extra boards a minimum of seven days of work each week; it would convert all the carrier's extra boards into guaranteed boards.

(b) At present, as in the past, the size of the extra boards is determined by the mileage registered by the men

assigned thereto, which in turn depends in part on the number of assignments those men protect. If the carrier were required to call men from the extra boards not only to fill temporary vacancies in existing assignments but also to fill non-existing ("blanked") positions, the mileage registered by such men would increase materially and would frequently exceed an average of 3800 miles per man. Whenever that happened, additional men would have to be assigned to the extra boards, pursuant to paragraph D(3) of Section II of Award 282 and the existing mileage agreements described in paragraph 10(a) above. C(7) firemen who now hold regular assignments would be the only men who would be available for the purpose. Thus, such men would be forced off their assignments and onto the extra boards. But since each man assigned to the boards would be entitled to work a blanked position whenever there was no other work available, increasing the size of the boards would serve only to increase total mileage still further, necessitating still more increases in the size of the boards. Eventually, many or all men regularly assigned to "blankable" positions would be forced off such assignments and onto the extra boards.

12. Apart from what is said in the preceding portion of this part of this affidavit, the following facts should be noted with respect to the specific claims listed on pages 5 through 60 of the Byron affidavit:

[11] (a) Some of the firemen named on pages 5-60 of the Byron affidavit are members, not of the BLF&E, but of the BLE. The BLE has notified the carrier that the BLF&E has no right to make claims and prosecute grievances on behalf of BLE members. (See, e.g., correspondence attached hereto as Exhibits E-1 through E-6.) In accordance with the claim and grievance procedure described in paragraphs 6 through 8 of this affidavit, the BLE at this time is actively prosecuting claims on behalf of these men with respect to the issues raised in Part I of the Byron affidavit. Among such claims are a number which are now pending on appeal to the carrier's Manager of Personnel, as follows:

Name of Fireman	Named in Byron affidavit on:
A. N. Burge	Pages 24-26
D. L. Duke	Page 28
J. T. Everett	Pages 28-29
W. S. Kelley	Page 30
E. L. Long	Pages 32-33
R. L. Ricks	Pages 35-36
G. H. Prause	Pages 36-37
J. J. Ward	Pages 37-38

The carrier is unable to say which of the other men named in the Byron affidavit are members of the BLE, except that the BLE recently appealed a claim with respect to a different matter for P. A. Jurica (page 38 of the Byron affidavit) without objection from Mr. Byron.

(b) The parties' contracts recognize the right of firemen members of the BLE to have the BLE prosecute claims and grievances on their behalf, and the right of the BLE to do so. The BLE, as well as the BLF&E, was an organization party to the Washington Agreement of August 11, 1948, of which the claim and grievance procedure quoted in paragraph 7 of this affidavit was section 17. Subparagraph (e) of the procedure provides:

This rule recognizes the right of representatives of the organizations parties hereto to file and prosecute claims and grievances for and on behalf of the employees they represent.

[12] Further, the contracts between the BLF&E and the carrier provide:

The right of an engineer, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the general committee making the schedule involved, is conceded.

Those rights are subject only to the right of the General Chairman of the BLF&E to interpret firemen's rules, provided by the mediation agreement of February 16, 1961 (National Mediation Board Case No. A-6430) between the BLF&E and the carrier:

When a claim or grievance of a fireman is submitted or appealed to the Manager, Department of Personnel, by other than the regularly constituted Committee of the Brotherhood of Locomotive Firemen and Enginemen, the Manager, Department of Personnel, will submit the claim or grievance to the General Chairman of the Brotherhood of Locomotive Firemen and Enginemen. The General Chairman of the Brotherhood of Locomotive Firemen and Enginemen will then advise if in his opinion the rule cited, as applied to the exact facts described, supports or does not support the claim as presented.

Following such interpretation, said claim or grievance will be handled in accordance with the following:

The right to make and interpret contracts, rules, rates and working agreements of firemen shall be vested in the Committee of the Brotherhood of Locomotive Firemen and Enginemen and the Company.

All controversies affecting locomotive firemen will be handled in accordance with the interpretation of the firemen's contract as agreed upon between the Committee of the Brotherhood of Locomotive Firemen and Enginemen and the Company.

(c) Moreover, with a very few exceptions, the BLF&E has failed to prosecute claims in accordance with the claim and grievance procedure on behalf of those men named on pages 5 through 60 of the Byron affidavit who do belong to the BLF&E. On September 23, 1964, Mr. Byron did make a generalized complaint to the carrier's Manager of Personnel on behalf of unnamed firemen with respect to unspecified days. (See Exhibit F hereto). However, such

a complaint does not constitute compliance with subparagraphs (a) through (d) of the claim and grievance [13] procedure. Consequently, with the exceptions just mentioned, all such claims are barred by the contractual provisions quoted in paragraph 6 of this affidavit. The instances in which claims have been prosecuted in accordance with the claim and grievance procedure are as follows:

Name	Page in Byron Affidavit	Dates for Which Claims Made (1964)	Present Status of Claims
A. J. Trosclair	40	Sept. 23, 24 Oct. 22, 24 Nov. 2	Appealed to Manager of Personnel and decided adversely to claimant on January 19 and 26, 1965. General Chairman has not docketed claims for conference.
W. J. Adams	40	Nov. 6, 10	Appealed to Manager of Personnel and decided adversely to claimant on January 26, 1965. General Chairman has not docketed claims for conference.
A. M. Johnson	19-20	Aug. 26 Oct. 7, 27, 29, 30 Nov. 2, 4	Appealed to Manager of Personnel on January 28, 1965. Appeal still pending.
A. R. Bostic	20	Nov. 7, 8	Appealed to Manager of Personnel on January 28, 1965. Appeal still pending.

(d) Paragraph (7) on pages 5 through 60 of the Byron affidavit purports to set out the names of firemen who were "deprived of work which they were . . . entitled to perform," the "days of work they . . . lost," and the jobs to which they supposedly should have been assigned. However, the carrier's records indicate that many of these men worked on the days they allegedly "lost" (indeed, some were working at the calling time for the jobs to which Mr. Byron says they should have been assigned); and many of the men were not available, either because they were "laying off," or because they were "not rested" (eight hours had not elapsed since they last came off duty), or because they were not assigned to the extra board but instead

held regular assignments, at the starting time for the job to which they allegedly should have been assigned. If the BLF&E had followed the prescribed claim and grievance procedure, the true facts with respect to such matters would have been ascertained and many of these claims would not now be before the Court. While this affiant has not been able to verify all the relevant facts in the short time which has elapsed since he first received a copy of the Byron affidavit, he is informed and believes that the allegations on pages 5 through 60 of the Byron affidavit are untrue in at least the following particulars:

* * * * *

[37] 13. With respect to the specific allegations in Part I of the Byron affidavit:

(a) The statements in paragraph (1) with respect to C(2) and C(7) firemen are true, except that it is believed that the employment of 42 (rather than 41) firemen with less than two years' seniority was terminated as of May 12, 1964. The statements in paragraph (1) with respect to C(6) firemen are not accurate; the true facts are stated in Part II of this affidavit.

(b) Paragraphs (2) through (5) are true.

(c) Paragraph (6) is not true except as stated in paragraph 10 of this affidavit.

(d) Paragraph (7) is untrue in the particulars described in paragraph 12(d) of this affidavit.

(e) Paragraph (8) is not true.

(f) Paragraphs (9) through (13) and (15) and (16) are true. This affiant is not in a position to say whether paragraph (14) is true or not.

(g) Paragraph (17) is not true.

[38]

PART II

Separation of C(6) Firemen

14. The claim made in Part II of the Byron affidavit (pages 65-73) concerns the procedure the carrier employed pursuant to Part C(6) of Section II of Award 282, when it

offered firemen who had more than two but less than ten years' seniority a choice between comparable jobs and severance pay.

15. The carrier's procedures were as follows:

(a) On May 12, 13 and 14, 1964, in accordance with Part C(6) of Section II of Award 282, the carrier posted notices listing numerous comparable jobs made available to all qualified firemen in each seniority district. Each such notice was posted for a period of at least seven days. Ten bids were received from C(6) firemen who accordingly were assigned to the jobs for which they bid. (An example of a letter to one of these men notifying him of his assignment is attached hereto as Exhibit G-1.) The ten men and the jobs to which they were assigned were as follows:

F. S. Breazeale	Brakeman
M. Holloway	Brakeman
J. B. Fitzgerald	Clerk
R. J. Schwarz	Brakeman
L. L. Henderson	Brakeman
E. H. Kruse	Yardman
B. J. Manley	Yardman
B. J. Short	Yardman
J. B. Jackson	Brakeman
D. N. Rush	Tel-Clerk

(b) On May 21, 1964, seven days after the last of the above mentioned notices were posted, the carrier served written notices offering the jobs which had not been taken upon a number (not exceeding the number of comparable jobs offered) of the most junior C(6) firemen in each seniority district, and notified those men that they must bid for such jobs within three days or they would be separated from service and would receive the separation allowance prescribed by Award 282. (An example of such a notice is attached hereto as Exhibit G-2.)

(c) On May 25, 1964, after the prescribed three days had elapsed, the carrier, starting with the most junior employee and proceeding in reverse seniority order, determined whether each such employee had accepted [39] a compa-

erable job and separated from service those employees who had not. Three men elected to take comparable jobs, to which they were assigned:

Name	Job
W. P. Lewter	Brakeman
R. D. Lounsberry	Roadway Machine Helper
R. A. Thompson	Brakeman

The remaining men who had received the May 21 notices (63 in number) were notified that they were separated from service in accordance with their election. (An example of such a notice is attached hereto as Exhibit G-3.)

(d) On May 26, 1964, notices like those mentioned in subparagraph (b) above were served on an additional sixteen C(6) firemen. None of the sixteen men elected within three days to accept a comparable job. On May 29, each was notified that he was separated from service in accordance with his election.

(e) On or about May 29, 1964, each of the 63 men to whom a separation notice was sent on May 25 and each of the 16 men to whom such a notice was sent on May 29 was paid his separation allowance and acknowledged receipt thereof. (An example of such a receipt is attached hereto as Exhibit G-4.) Not one of these men accepted his money under protest; not one registered any objection to the procedures employed by the carrier in separating him from service.

(f) On May 22, 1964, in answer to Carriers' Question No. 1, Section II, Part C(6), and BLF&E Question No. 22, Arbitration Board No. 282 resolved an ambiguity in the Award with respect to the amount of the separation allowance to be paid to C(6) employees who elect to terminate their services holding that instead of a maximum of \$2400 such employees are entitled to a full one-half of their earnings during the 24 months preceding the effective date of the Award. In a "Note" to the answers, the Board stated that "if a fireman (helper) covered by Section II, Part C(6), accepted a comparable job under protest and now desires to accept a separation allowance under the terms of this interpretation, he may do so pro-

vided he exercises such option no later than June 15, 1964." Thereafter, J. R. Lewis, Acting General Chairman, BLF&E, asked the carrier to allow the firemen who had accepted comparable jobs to rescind their elections in that regard, whether or not they had registered any protest, in order to give them the opportunity to take advantage of the Board's interpretation. On May 26, 1964, in accordance with Mr. Lewis' request, the carrier advised each [40] of the thirteen men who had accepted comparable jobs that he might elect by not later than June 15 to cancel his previous bid and accept severance pay instead. Twelve of the thirteen men elected to do so, and on June 16 were paid the prescribed allowances. (Examples of the carrier's notice, an employee's response, and related correspondence are attached hereto as Exhibits G-5 through G-6.) One of the men, R. D. Lounsberry, elected to keep the comparable job to which he had been assigned.

(g) Thereafter, no C(6) fireman employed as such remained on the carrier's payroll. In May of 1964, nine C(6) firemen who had been employed by the carrier previously were in military service. These men are being offered comparable jobs as they return to civilian life. Of the men who have now returned, only one has accepted such a job.

16. The carrier has paid a total of \$555,421.62 in separation allowances to the C(6) firemen whose employment was terminated as stated above. Not one of these men, whom the BLF&E now seeks to have reinstated, registered any protest as to the carrier's procedures when he accepted severance pay; not one has tendered a refund of the money he accepted. The carrier has had to hire new employees to fill many comparable jobs which the C(6) firemen did not elect to accept.

17. It was and is the carrier's understanding that it was proper to offer a multiple number of comparable jobs at the same time to a number of the most junior C(6) firemen, in each seniority district, not exceeding the number of jobs so offered; and that the separation from service of the carrier's C(6) employees under the circumstances described above complied with Award 282. Clearly, al-

though Part C(6) of Section II of the Award speaks of an offer of a "comparable job," it is proper to offer more than one comparable job to a C(6) employee. That being the case, it seems entirely reasonable to make such offers (as they were made in this case) to as many employees as there are jobs, so long as the most junior man is given the first choice among the jobs, the next most junior man the second choice, and so on, in accordance with the Award. And there can be no objection whatever to separating from service men who accept without protest separation pay computed as required by the Award. It is the carrier's under- [41] standing that the subsequent interpretations by the Board, on which the BLF&E now relies, were not intended to be to the contrary. To confirm this understanding, the carrier has submitted the following question to the reconvened Arbitration Board (see Question No. 2, in Exhibit A).⁵

A carrier posted notice of a multiple number of comparable jobs within a seniority district and, after the expiration of the seven-day period in which such jobs were made available to all qualified firemen (helpers) in order of seniority, the carrier served written notices offering such comparable jobs upon a multiple number (not exceeding the number of comparable jobs offered) of the most junior C-6 firemen (helpers) within the seniority district. Upon expiration of the three-day period from receipt of such notices, the carrier, starting with the most junior employee and proceeding in reverse seniority order, determined whether a comparable job had been accepted pursuant to such notices and separated from service those employees who did not accept a comparable job. All employees

⁵ The carrier is unable to understand what possible objection there can be to the separation from service of those C(6) men who elected to take and were assigned to comparable jobs, and who were then allowed at the request of the Acting General Chairman of the BLF&E to cancel their bids and take severance pay instead. However, since the BLF&E has included such men among the men for whom claim is made (compare pp. 66-67 with 68-70 of the Byron affidavit) the carrier has also submitted to the Board a question as to the propriety of its actions in this regard. (See Question No. 3, in Exhibit A.)

who were thus separated from service were offered and accepted without protest separation pay computed in accordance with the requirements of the Award as interpreted by the Board. It is the carrier's understanding that the separation from service of such C-6 employees under the circumstances described complied with Part C(6) of Section II of the Award. Is the carrier's understanding correct?

18. The BLF&E has not filed or prosecuted claims on behalf of the men named in paragraph (9) on pages 68-70 of the Byron affidavit in accordance with the parties' claim and grievance procedure. On May 27, 1964, J. R. Lewis, Acting General Chairman, BLF&E, notified the carrier that in his opinion the "posting of blanket job bulletins" was improper and requested the carrier to [42] withdraw its notices. (A copy of Mr. Lewis' letter is attached hereto as Exhibit H.) While Mr. Lewis was perfectly entitled to make any request he saw fit, his letter was neither a claim nor a grievance made in compliance with subparagraphs (a) through (d) of the claim and grievance procedure, quoted in paragraph 7 of this affidavit. Consequently, since more than sixty days has elapsed since the separation of the C(6) firemen, claims on their behalf are now barred by subparagraph (a) of the claim and grievance procedure.

19. With respect to the specific allegations in Part II (pages 65-73) of the Byron affidavit:

(a) Paragraph (1) is true, except that Part C(6), Section II, of Award 282, applies only to firemen with more than two but less than ten years' seniority on the effective date of the Award.

(b) Paragraph (2) is true.

(c) Paragraph (3) is true, except that while some of the carrier's notices of comparable jobs were dated May 11, 1964, the carrier first posted such notices on May 12, 1964.

(d) Paragraph (4) is true; Fireman R. A. Thompson also accepted a comparable job offer.

(e) Paragraph (5) is true; see paragraph 15(f) of this affidavit.

(f) Paragraph (6) is true, except that sixteen C(6) firemen were not sent notices requiring an election within three days between a comparable job and severance pay until May 26, 1964; see paragraph 15(d) of this affidavit.

(g) Paragraph (7) is true, except that 63, not 73, firemen were so notified on May 25, 1964; 16 more firemen were so notified on May 29, 1964. See paragraphs 15(c) and (d) of this affidavit.

(h) The letter from J. R. Lewis to L. C. Albert, referred to in paragraph (8), is attached hereto as Exhibit H and speaks for itself; see paragraph 18 of this affidavit.

(i) Paragraph (9) is true, except that 63 (not 73) C(6) firemen were separated from service as of May 25, 1964; 16 C(6) firemen were separated from service as of May 29, 1964; and 12 C(6) firemen who elected to cancel previous bids for comparable jobs were separated from service on or by June 15, 1964.

[43] (j) With respect to paragraph (10), it is true that Part C(6) of Section II of Award 282 has been the subject of interpretations by Arbitration Board No. 282. On May 23, 1964, the Board answered the Carriers' Question No. 1 as to Part C(6) in the language quoted in paragraph (10), but added thereto the "Note" quoted in paragraph 15(f) of this affidavit.

(k) Paragraph (11) is true.

(l) The true facts regarding the subject matter of paragraph (12) are stated in paragraphs 15(a) through (f) of this affidavit.

(m) With respect to paragraph (13), it is not true that the employment contracts of any C(6) firemen were improperly terminated by the Southern Pacific.

[44]

PART III

Freight Pool Mileage

20. The claim made in Part III (pages 73-96) of the Byron affidavit is that the carrier has violated mileage rules which govern the assignment of men to freight pool service and which were in effect on the day preceding the effective date of Award 282. That is not true; but even

if it were true the claim would present only a "minor dispute" as to the application of the mileage rules and would involve no violation of the Award.

21. The relevant practices are these:

(a) To operate many of its freight trains, the carrier maintains at certain terminals lists of firemen known as "firemen's freight pool lists." The men on the freight pool lists are called for duty on a first-in first-out basis.

(b) Prior to the Award, when men regularly assigned to the freight pools were temporarily unavailable, as when they were laying off or ill, their turns were taken by men from the extra boards. When freight pool assignments were vacated permanently by the incumbents, as when the incumbents retired or were assigned to engineer service, their positions were bulletined for bids for a period of seven days, and in the interim their turns were taken by extra men.

(c) Since the Award, temporary and permanent vacancies in "vetoed" freight pool assignments are always filled as they were in the past. Similarly, temporary vacancies in "blankable" assignments are always filled as they were in the past, unless there are no extra men available and rested to fill them. On the other hand, permanently vacated positions are not bulletined but instead are abolished; accordingly, such positions are not filled and the resulting "blanked" turns are operated without firemen.⁶

(d) Both before and since the Award, the number of men assigned to each pool has been determined pursuant to the parties' mileage limitation [45] agreements. As stated in paragraph (4) on pages 76-77 of the Byron affidavit, the mileage agreements "provide that the total number of miles *accumulated by the employees* regularly assigned to a freight pool list" is to be computed at ten day intervals, on the 3rd, 13th, and 23rd days of each month; that ten-day mileage is then multiplied by three to convert it into the equivalent of a monthly figure; the resulting figure is then divided by the number of men assigned to the pool to give

⁶ If a freight pool fireman is promoted to engineer service but returns to fireman service within seven days, he is allowed to resume his old position.

an average mileage figure. If the resulting average exceeds 3800 miles, additional men are assigned to the pool, and if the average is less than 3200 miles, the number of men assigned to the pool is reduced. Both before and since the Award, firemen regularly assigned to the pools and extra men who take their turns have been required to record their miles as they complete each trip on registers maintained for the purpose. Both before and since the Award, the mileage thus registered by the men has been used in making the prescribed computations at ten-day intervals.

(e) Since the Award, as already indicated, some freight pool turns have been blanked, as when the incumbent was separated from service with severance pay or was assigned to engineer service. In such cases, no mileage is recorded or registered by any fireman, and accordingly none is included in the prescribed ten-day computations. Similarly, when "blankable" turns are operated without firemen because the assigned men are temporarily unavailable and the extra board is exhausted (i.e., there are no rested extra men available to take such turns), no mileage is registered by any fireman, and accordingly none is included in the computations. As a result, the number of men assigned to several freight pools has decreased.

22. The carrier's practices since the Award have been much more liberal than is required by the Award and have complied in all respects with the mileage limitation agreements.

(a) Under Part D(2) of Section II of Award 282, firemen who remain on the active working lists of the carrier "have no right to jobs which the carrier may discontinue pursuant to the provisions of this Award if other employment in any class of engine service, for which they are qualified, is available to them in their respective seniority districts." The Board has expressly determined that under the terms of Part D(2), "the carrier has [46] the right to determine which of the blankable fireman (helper) positions in a seniority district shall be made available to those firemen (helpers) who are covered by Parts C-6 and C-7 and are entitled to work as firemen (helpers). In the event of a decrease in the number of firemen (helpers) positions in

freight or yard service due to a decrease in service requirements, C-6 or C-7 firemen (helpers) who are thus displaced may, if there is no other work available for them, exercise seniority to blankable positions which are designated by the carrier." (Answer dated June 9, 1964, to BLF&E Question 43.⁷)

(b) Since the carrier "has the right to determine which of the blankable [fireman] positions in a seniority district" shall be made available to firemen remaining in service, the carrier is entitled to determine the number of men to be assigned to non-vetoed freight pool assignments, so long as employment is made available to all C(6) and C(7) men remaining in service, "in any class of engine service for which they are qualified"; the blankable positions to be filled (pursuant to seniority) are the "blankable positions which are designated by the carrier."

(c) Nevertheless the carrier has not removed C(7) firemen from the jobs (including freight pool jobs) which they held prior to the Award, except as prescribed by the mileage limitation agreements or when it was necessary for the carrier to do so to meet its obligations under the Award (1) to fill non-blankable assignments and (2) to maintain its extra boards in accordance with pre-existing rules. Thus, the practices to which the BLF&E objects not only do not violate the Award but in fact they go well beyond the carrier's obligations thereunder.

(d) Similarly, the carrier's practices satisfy all its obligations under the mileage limitation agreements. The objection made [47] in Part III of the Byron affidavit is to the practice of including only the miles registered at the end of each trip by firemen in freight pool service, in the mileage computations made three times each month. But

⁷ BLF&E Question 43 was as follows:

(a) Does a fireman-helper covered by C-6 or C-7 of the Award have the right to remain on or bid in any job as contemplated by the schedule rules that were effective before date of the Award or can the carrier exercise the individual seniority of the employee under the Award.

(b) May the carrier arbitrarily abolish blankable firemen-helper positions, thereby depriving C-6 and C-7 employees from work to which they would otherwise be entitled in accordance with existing schedule rules.

the mileage referred to in the mileage limitation agreements is registered mileage. Paragraph 6 of the agreements provides:

Arrangements for keeping record of the mileage of firemen will be made between the railroad officials and [BLF&E] committees, and firemen will be required, upon the completion of each trip, to register their total mileage or equivalent thereof for the month or checking period.

Accordingly, the claim that the carrier has "misapplied" the mileage rules is unsound on its face. But even if that were not true, the claim would present only a "minor dispute" as to the proper interpretation and application of those rules. The only question here is whether the carrier's practices violate the Award. As already stated, they do not; the carrier has gone much farther in accommodating its employees than is required by the Award.⁸

23. With a few exceptions listed below, no claims have been filed, in accordance with the parties' claim and grievance procedure, on behalf of the individuals named in Part III of the Byron affidavit; accordingly, any such claims are now barred under the provision of subparagraph (a) of that procedure, quoted in paragraph 6 of this affidavit. Moreover, some of the individuals for whom claim is made in Part III of the Byron affidavit are members not of the BLF&E but of the BLE, which quite properly claims the exclusive right itself to prosecute claims and grievances on their behalf.

(a) The instances in which claims have been made by the BLF&E on behalf of men named in Part III of the Byron affidavit, and the status of such claims, are as follows:

⁸ To confirm its understanding of the requirements of the Award, the carrier has submitted appropriate questions to the reconvened Arbitration Board. (See Questions No. 1 and No. 4 in Exhibit A hereto.)

Name	Page in Byron Affidavit	Status
A. J. Trosclair	90	Progressed to decision by Manager of Personnel on October 28, 1964; not docketed for conference by BLF&E General Chairman.
H. B. Massingill	82-83, 87	No claim made on time return and delay report. Claim made by Local Chairman by letter to Superintendent on October 30, 1964; denied by Superintendent on merits and for failure [48] to handle initially in usual manner in accordance with contract; appealed to Manager of Personnel; denied by Manager of Personnel on January 13, 1965, on merits and on the procedural ground. Not docketed for conference by BLF&E General Chairman.
E. R. Harwell	90	Claims made but not appealed to Manager of
C. J. Skalicky	90	Personnel following adverse decision by Superintendent; now barred by time limitations prescribed by subparagraph (b) of the claim and grievance procedure.

(b) The BLE is actively prosecuting claims involving removal from freight pool service on behalf of F. B. Danna and R. L. Ricks, named on pages 88 and 89 in Part III of the Byron affidavit. In addition, it is prosecuting other claims involving the Award on behalf of J. J. Ward and G. H. Prause, named on pages 88 and 89 in Part III of the Byron affidavit. The BLE claims the exclusive right to handle claims on behalf of its members, in which connection see paragraphs 12(a) and (b) of this affidavit. According to correspondence received by the carrier from Mr. Byron, Danna has indicated that he wishes to have the BLF&E handle claims on his behalf involving Award 282, but the carrier is not aware that Ward or Ricks or Prause has ever expressed any such desire.

24. With respect to the specific allegations in Part III (pages 73-96) of the Byron affidavit:

(a) Paragraphs (1) through (4) are true. Paragraph (5) is true, except that the third, fourth and fifth sentences in the schedule rule quoted on page 78 of the Byron affidavit apply only to extra lists and not to freight pool lists. Paragraph (6) is true. Paragraph (7) is true, except that

seniority rules, not mileage rules, assure firemen the right to bid for and hold jobs in freight pool service on the basis of their seniority.

(b) Paragraph (8) is not true. So far as this affiant is aware, the carrier has never announced to Mr. Byron or to anyone else that temporary vacancies in non-vetoed freight pool assignments would not be [49] filled by calling firemen from the extra lists. On the contrary, as stated in paragraph 21(c) of this affidavit, the carrier always fills such assignments unless the extra list is exhausted. It is true, as stated in paragraph 21(e) above, that mileage of trains operated without firemen is not included in the mileage computations made at the end of each ten-day checking period.

(c) Paragraph (9) is not true, except that it is true that freight pools are smaller than they would be if the mileage of trains operated without firemen were included in periodic mileage computations. The carrier does not include such mileage in the computations, not for the "purpose" of reducing the size of freight pools, but because the procedure is prescribed by the parties' mileage limitation agreements. See paragraph 22(d) of this affidavit. The number of men assigned to freight pool service as of February 1, 1965, was approximately sixty-six percent (not fifty percent) of the number assigned to such service in June, 1964.

(d) Paragraph (10) is not true in two respects: (1) Firemen who are removed from freight pool service assignments pursuant to the mileage limitation agreements may exercise their seniority to assignments in any class of service. (2) As are firemen assigned to yard service, firemen assigned to freight pool service are often required to work at night and at away-from-home terminals.

(e) Paragraph (11) is true, except that it is not true that the carrier misapplied the mileage limitation rules to the Lufkin freight pool.

(f) With respect to paragraph (12), it is not true that the carrier failed to call firemen from the extra boards to fill the assignments of E. J. Walker and H. B. Massingill while those two men were assigned to work as emergency engineers. Walker worked as an emergency engineer from

June 11 to June 15; during that time his turn in the Lufkin freight pool worked twice, the first time on June 12, when it was filled by extra fireman F. M. Johnson, and the second time on June 14, when it was filled by extra fireman C. H. Barfield. Massingill worked as an emergency engineer on June 11; his turn that day was filled by extra fireman C. M. Luce. [50] Further, while it is true that the added fourth assignment referred to in paragraph (12) was not filled with men from the extra board while it was under bulletin, that was because there were no extra men available on the firemen's extra board.

(g) Paragraph (13) is true, except that three (not four) firemen were assigned to the Lufkin pool during the period from October 1 to 10. Further, while it is true that J. H. Crenshaw's assignment was not filled with extra firemen on the occasions referred to in paragraph (13), that was because there were no available men on the firemen's extra board. Similarly, paragraph (14) is true, except that while it is true that J. H. Crenshaw's assignment was not filled with extra firemen on the occasions referred to in paragraph (14), again that was because there were no available men on the firemen's extra board. With respect to paragraph (15), it is true that G. L. Moore's assignment was not filled with extra firemen on the occasions referred to in paragraph (15), but again that was because there were no available men on the firemen's extra board. It is not true that the Lufkin freight pool has ceased to exist; as of February 1, 1965, there were two firemen assigned to it.

(h) With respect to paragraph (16), it is not true that the carrier has misapplied mileage rules either with respect to the firemen's freight pool at Lufkin, Texas, or elsewhere. Further, it is not true that any fireman has been compelled either to take an undesirable job or to cease working for the carrier. It is true that the men named on pages 85 through 90 of the Byron affidavit were removed from freight pool service on or near the days there stated.

(i) Paragraph (17) is not true. The carrier has not misapplied mileage rules and has not used such rules for the "purpose" of removing firemen either from freight pool assignments or from assignments on regularly scheduled freight trains.

(j) Paragraph (18) is true.

(k) Paragraph (19) is not accurate in the following respects: The vacations of C. B. Jordan and A. L. Blagg commenced on July 24 and July 25, 1964, respectively. Their assignments were not filled in their absence because there were no men available from the extra board (the Yoakum extra board, which protected the assignments, had no men [51] assigned to it in accordance with mileage rules applicable to the extra boards). Jordan was removed from the assignment to Trains 371-352 on August 3, 1964. Blagg was removed from the assignment on August 13, 1964. So far as this affiant is aware, no one representing the carrier made any statements to either Jordan or Blagg with respect to Parts A(1) and B(5) of Award 282. With respect to paragraph (20), it is not true that the carrier's actions were arbitrary or that they were not consistent with the provisions and intent of the Arbitration Award.

(1) Paragraph (21) is not true, except that E. H. McClain, A. R. Koehl, and L. B. Hawkes, of Victoria, Texas, were removed from regular assignments in assigned through freight service. On the other hand, paragraph (22) is true except in the following respects: It is true that the three men mentioned in paragraph (22), McClain, Koehl, and Hawkes, were removed from assignments once designated as Trains 371-372; they were removed therefrom on July 13, 1964. However, it is not true that they were removed therefrom arbitrarily or that such removal was "contrary to" either the firemen's schedule rules or Award 282. Further, it is not true that following their removal from their freight assignments they were obliged to work at lower pay. That fact is demonstrated by a comparison of their earnings during the first half of 1964, prior to their removal from Trains 371-372 on July 13, 1964, and their earnings during the last half of that year:

Name	Earnings	Earnings
	January-June 30, 1964	July 1-December 31, 1964
L. B. Hawkes	\$4,330.86	\$4,630.46
A. R. Koehl	\$4,485.30	\$5,617.11
E. H. McClain	\$4,510.87	\$5,259.26

Similarly, their earnings were higher in 1964 (i.e., since the Award) than they were in 1963:

Name	Earnings in 1963	Earnings in 1964
L. B. Hawkes	\$8,502.35	\$8,961.32
A. R. Koehl	\$8,980.20	\$10,102.41
E. H. McClain	\$9,282.91	\$9,770.13

[52] (m) Contrary to paragraph (23), the carrier has neither misapplied mileage rules nor violated Award 282. Further, the legal contentions stated in paragraph (23) with respect to Award 282 are erroneous. See paragraph 22 of this affidavit.

(n) Paragraphs (24) through (29) are true. The legal contentions stated in paragraph (30) are erroneous. See paragraph 22 of this affidavit.

[53]

PART IV

Job Bulletins

25. The claim made in Part IV of the Byron affidavit (pages 96-118) is that the carrier has violated rules in effect before the Award, under which "bulletins" were posted for vacant and newly established positions for which firemen were permitted to "bid" on the basis of their seniority.

26. The specific practices to which objection is made in the Byron affidavit are these:

(i) Since June 1964, after the Award was in effect, the carrier has not posted bulletins permitting men to bid for "blankable" jobs which were permanently vacated by the incumbent; instead, the carrier has discontinued or "blanked" such jobs.

(ii) Since June 1964, the carrier similarly has not posted bulletins permitting men to bid for positions on newly established runs on which firemen were not required; instead, such runs have been operated without firemen unless they are subsequently "vetoed" (at which time, of course, bulletins would be posted).

(iii) Since May 1964, pursuant to an agreement with the

Acting General Chairman of the BLF&E, the carrier has not posted bulletins permitting men to bid for previously blanked positions which were re-opened to provide employment in accordance with the employment guarantees of Award 282 for junior C(7) firemen who otherwise would be without assignments; instead of leaving such firemen unemployed during the seven-day bulletin posting period, as would be required under the bulletin procedure, the carrier has assigned such men to jobs immediately.

The reason for each of these practices is different, but all are entirely proper.

27. The carrier has no obligation to bulletin blankable jobs which are permanently vacated and which the carrier desires to discontinue, for the following reasons.

(a) As previously indicated, Part D(2) of Section II of Award 282 provides that firemen who remain in service "shall have no right to jobs which the carrier may discontinue pursuant to the provisions of this Award if [54] other employment in any class of engine service, for which they are qualified, is available to them in their respective seniority districts."

(b) On June 9, 1964, Arbitration Board No. 282 held that Part D(2) of Section II of the Award means exactly what it says, in answer to BLF&E Question 43:

Q. No. 43

(a) Does a fireman-helper covered by C-6 or C-7 of the Award have the right to remain on or bid in any job as contemplated by the schedule rules that were effective before date of the Award or can the carrier exercise the individual seniority of the employee under the Award.

(b) May the carrier arbitrarily abolish blankable firemen-helper positions, thereby depriving C-6 and C-7 employees from work to which they would otherwise be entitled in accordance with existing schedule rules.

Answer to

(a) and (b) Under the terms of Section II, Part D(2), the carrier has the right to determine which of the blankable fireman (helper) positions in a seniority district shall be made available to those firemen (helpers) who are covered by Parts C-6 and C-7 and are entitled to work as firemen (helpers). In the event of a decrease in the number of firemen (helpers) positions in freight or yard service due to a decrease in service requirements, C-6 or C-7 firemen (helpers) who are thus displaced may, if there is no other work available for them, exercise seniority to blankable positions which are designated by the carrier.

(c) Accordingly, the carrier is entitled to discontinue or "blank" blankable positions which are permanently vacant if it chooses to do so. If it were obliged to post bulletins and accept bids for such positions, the firemen, not the carrier, would determine which positions would be blanked. But under the Award, "the carrier"—not the BLF&E or its members—"has the right to determine which of the blankable . . . positions in a seniority district shall be made available" to firemen remaining in service.⁹

28. Similarly, the carrier has no obligation to bulletin a newly established run in a type of service in which firemen are no longer required in the absence of a veto, unless it nevertheless desires to assign a fireman to the [55] run, or unless the run is subsequently vetoed by the local chairman.

(a) On May 17, 1964, Arbitration Board No. 282 decided the basic issue, in answer to BLF&E Question 6(b):

Q. No. 6(b) May the carrier consider as blankable,

⁹ To confirm its understanding of the requirements of the Award, the carrier has submitted appropriate questions to the reconvened Arbitration Board. (See Question No. 1 in Exhibit A hereto.)

those assignments which may be established in a ninety (90) day interim period between listings, and therefore lower the percentage of vetoed positions below ten (10) per cent?

Answer New regular assignments, established during an interim period between listings, may be operated without a fireman unless or until included in the local chairman's subsequent veto.

(b) Since "new regular assignments . . . may be operated without a fireman unless or until included in the local chairman's subsequent veto," it follows that the carrier need not post bulletins and accept bids for such assignments. An assignment which "may be operated without a fireman unless or until included in the local chairman's subsequent veto" is a blankable assignment: Under the Board's answer to BLF&E Question 43, quoted in paragraph 27(b) of this affidavit, it is "the carrier" that "has the right to determine which of the blankable . . . positions in a seniority district shall be made available" to firemen in service.

29. The third practice to which objection is made in Part IV of the Byron affidavit is one which the carrier has pursued only because the BLF&E agreed to it, to insure that junior C(7) firemen would not be left without assignments for a week at a time or longer, by reason of the operation of the bulletin rules. The relevant facts are these:

(a) Under the bulletin rule quoted on page 97 of the Byron affidavit, positions for which bulletins are posted are bulletined for a period of seven days. Under that rule, if the senior fireman in the district bids for a job under bulletin, he is assigned to it immediately. Otherwise, no one can be regularly assigned to the job until the end of the seven-day posting period, at which time the senior fireman who has made a bid is assigned to the position. In the interim, men from the extra boards are entitled to fill the

assignment¹⁰ [56] except in situations not pertinent here.¹¹

(b) If those rules were followed when the carrier reopened a previously blanked assignment in order to provide a position for a junior C(7) fireman who had been displaced from his previous position and lacked sufficient seniority to "bump" anyone, the junior man would remain without any assignment for a minimum of seven days. Men on the extra boards, not the displaced junior man, would be entitled to the newly reopened assignment during the seven-day posting period. And because of the junior man's relative lack of seniority, he still would not obtain an assignment at the end of the seven day period if anyone else bid for the position. In that case, the procedure would have to be repeated. A bulletin for some different job would have to be posted for seven days and in the meantime the displaced junior man would remain without an assignment.

(c) On or about May 25, 1964, J. R. Lewis (now deceased), the Acting General Chairman of the BLF&E, and this affiant, discussed this problem and agreed that when the carrier reopened previously blanked assignments to provide positions for displaced junior C(7) employees in accordance with the employment guarantees of Award

¹⁰ The parties' contracts provide: "Firemen assigned to the extra list shall be run first-in and first-out of all division terminals where extra lists are maintained, filling *all vacancies* in passenger service, freight service, helper service, yard service, or other service which extra men usually perform."

¹¹ The bulletin rules include the following provisions:

"When the mileage on a regular established run is increased or decreased 300 miles or more per month, the initial or final terminal station, the lay-over point or lay-over day is changed, or the scheduled leaving time is changed 3 hours or more, such run will be considered a new run and bulletined. This not to apply to pool service where the mileage is uncertain.

"A fireman on a regular assigned outlying run that has been re-arranged necessitating re-bulletining will work out the bulletin. In the event he does not care to bid in said run, he will be allowed to exercise his bumping rights when relieved from the re-arranged run.

"On runs working out of terminals where an extra list is maintained, it will be optional with the fireman as to whether or not he will work out the bulletin on re-arranged run. It will be incumbent upon the fireman in such cases to indicate his option prior to making a trip on the re-arranged run. If option is not made prior to calling time for the run, the fireman will be required to work out the bulletin."

282, the bulletin rules would not be followed but instead the junior man would be given an assignment immediately. Thereafter, the carrier has done just that, and until December of 1964 has done so without objection from Mr. Byron although Mr. Byron resumed his duties as General Chairman in June 1964.

(d) However, this solution to the problem did have one defect which became more apparent with the passage of time; it did not allow senior [57] men the opportunity to exercise their seniority with respect to reopened positions until they found themselves in "bumping" position—i.e., until they were without assignments for one reason or other. Because of that fact, in August 1964, two BLF&E local chairmen, G. W. Kyle and L. C. Stone, raised the problem with Mr. Byron over the telephone while Byron was in this affiant's office. Byron advised the two chairmen that he could do nothing about the matter because of the Award. Kyle and Stone subsequently complained about the problem to this affiant, who advised them that the carrier was entirely willing to enter into an agreement which would allow senior men to exercise their seniority with respect to reopened positions and at the same time would permit the carrier to provide positions for displaced junior C(7) employees.

(e) On December 4, 1964, the problem here in question was resolved on the Southern Pacific's Pacific Lines by agreement between the BLF&E and that carrier. (A copy of the agreement is attached hereto as Exhibit I.) Under that agreement, bulletins are posted for previously blanked jobs which are reopened to provide work for displaced junior C(7) men, but the carrier is permitted to assign the displaced man to the job during the posting period.

(f) On or about December 24, 1964, this affiant, because of the complaints by Kyle and Stone and on his own initiative, proposed the same agreement to Mr. Byron during a conference between the two. On January 4, 1965, Mr. Byron proposed in addition that all formerly blanked jobs which had been reopened and to which men were then still assigned be re-bulletined for bids. (A copy of Mr. Byron's counterproposal is attached hereto as Exhibit J.) This

affiant advised Mr. Byron that he would ascertain from the carrier's superintendents whether that would be feasible and would advise Mr. Byron of the carrier's position at the next conference between the two. This affiant promptly obtained the views of the superintendents, who believe that it would not be feasible to rebulletin all the jobs in question. However, this affiant last saw Mr. Byron on January 7, 1965, before the superintendents' replies were received, and consequently has never had the opportunity to pursue the matter further with him.

[58] (g) Under the circumstances, the BLF&E, not the carrier, is responsible for the seniority problem with respect to reopened positions of which Mr. Byron complains in his affidavit. The carrier is entitled to proceed in accordance with its agreement with Mr. Lewis until some different agreement is reached.¹²

30. No claims with respect to the issues in Part IV of the Byron affidavit on behalf of the men named in pages 103 to 111 thereof have ever been progressed to decision by the carrier's Manager of Personnel in accordance with the parties' claim and grievance procedure. Consequently, any such claims are now barred under the terms of subparagraphs (a) and (b) of the claim and grievance procedure. Moreover (in some cases contrary to allegations in the Byron affidavit), many of the men named on pages 103 to 111 were not the senior men who would have been entitled to bid for the jobs for which claims are now made. Accordingly, this affiant is unable to determine on what basis (if any) it can possibly be claimed that such men were entitled to such positions.

31. With respect to the specific allegations in Part IV, pages 96-118, of the Byron affidavit:

(a) Paragraph (1) is true, except that the fourth sentence in paragraph (1) is not true; the junior men on the extra list would be assigned to the job. Paragraph (2) is true. Paragraph (3) is not true, except as stated in para-

¹² See Question No. 6, in Exhibit A hereto, submitted to reconvened Arbitration Board No. 282 by the carrier.

graphs 26 through 29 of this affidavit. Paragraphs (4) and (5) are true.

(b) The first sentence in paragraph (6) is not true, except that it is true that on or about June 26, 1964, the carrier stopped posting bulletins in the circumstances described in subparagraphs (i) and (ii) of paragraph 26 of this affidavit. The second sentence in paragraph (6) is true. This affiant is not able to say at this time whether or not Johnson and Mounds were the senior men who actually made bids, but is able to say that they were not the senior men who were in a position to bid.

(c) Paragraph (7) is not true, except that it is true that since June 1964, the carrier has not posted bulletins in the circumstances [59] described in paragraph 26 of this affidavit.

(d) The first sentence of paragraph (8) is not true, except that it is true that blanked jobs are not made available to any firemen, and previously blanked jobs which are reopened to provide assignments for displaced junior C(7) employees are made available only to those employees, subject however to the usual right of all senior firemen in "bumping" position to "bump" junior employees. The remaining sentences in paragraph (8) are not true.

(e) Paragraphs (9) and (10) are not true, except as stated in paragraphs 26 and 29 of this affidavit. Paragraph (11) is not true except as stated in paragraphs 26 through 29 of this affidavit.

(f) With respect to paragraph (12), it is not true that the carrier's actions regarding the posting of bulletins and the taking of bids for assignments are contrary to Award 282. With respect to the specific allegations in the tabulation in paragraph (12), see paragraph 30 of this affidavit.

(g) Paragraph (13) is true. The quotations in paragraph (14) are accurate and speak for themselves. Paragraphs (15) through (17) are true, although paragraph (17) does not necessarily include all relevant interpretations rendered by Arbitration Board No. 282.

[60]

PART V

Deadman Controls

32. The claim made in Part V of the Byron affidavit (pp. 118-123) is that the carrier is failing to comply with the provision in Part B(5) of Section II of Award 282 that "no yard locomotive shall be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition." Two distinct complaints are made in this connection.

33. The first of these complaints concerns locomotives which are conceded to be road locomotives, used on trains which the carrier operates from Ennis through Dallas and Sherman to Dennison, Texas. For a time, these road locomotives were sometimes used, when the trains reached Dallas and Sherman, in making interchange deliveries of large consists of cars. On occasion, these switching movements were made by crews which did not include firemen, although the road locomotives were not equipped with deadman controls. However, such use of the road locomotives did not violate the Award. In answering BLF&E Question 61, Board 282 determined explicitly that the deadman control requirement does not apply to road locomotives used in yard or industrial switching:

[See p. 14, *supra*.]

* * * * *

34. The second complaint made in the Byron affidavit is that the carrier has operated locomotives on which the deadman controls were inoperative with crews to which no firemen were assigned. That is not the carrier's practice. The true facts concerning the specific instances in which locomotives with inoperative deadman controls were allegedly used, listed on pages 122 and 123 of the Byron affidavit, are as follows:

[61] (a) Engines 161 and 5885, used for a single yard transfer movement at Shreveport, Louisiana, on June 23,

June 24 and again on June 25, 1964, are not yard locomotives but instead are road locomotives. Engines 161 and 5885 have horsepower of 1600 and 1750 respectively and coupled in multiple (as they were on these three occasions) have a combined horsepower of 3350. The two engines ordinarily are used in road service; they are not ordinarily used in yard switching assignments. Accordingly, these locomotives need not be equipped with deadman controls, in view of the Arbitration Board's answer to BLF&E Question 61 quoted in the preceding paragraph.

(b) Engine 179, used at Hearne, Texas, on nine occasions between August 17 and August 25, 1964, was equipped with a deadman control which was operative. Engine 179 was completely serviced in the Hearne roundhouse on August 6 and again on August 12, 1964. The first report of a defect in the deadman control was made on August 26, 1964, by a crew which was using the engine at the time. The crew (which included a fireman) was given a different engine and the deadman control on Engine 179 was promptly repaired that same day.

(c) Engine 170, used at the Houston Terminal on June 17, 1964, was not equipped with a deadman control. However, it was used only from 7:30 a.m. to 8:45 a.m., at which time the situation was remedied through the exchange of Engine 170 for an engine equipped with the required appliance. All personnel have been instructed that such engines should not be operated by crews to which no fireman is assigned.

35. Claims have not been presented to the carrier and progressed in accordance with the parties' claims and grievance procedure on behalf of several of the individuals named in paragraphs (5) and (8) on pages 119-121 and 122-123 of the Byron affidavit. The relevant facts are as follows:

(a) A claim was presented to the carrier for V. R. Blakley with respect to the use of road locomotives on October 8, 1964 (p. 120) and was rejected by the carrier with a time correction notice dated October 21, 1964. The claim was not appealed subsequently. Consequently, it is now barred

by the terms of subparagraph (b) of the claim and grievance procedure.

(b) No claims were ever presented to the carrier for C. M. Luce with respect to the use of engine 161 on June 23, 1964, or for C. H. [62] Barfield with respect to the use of engines 161 and 5885 on June 24, and 25, 1964 (p. 122). Consequently, any such claims are now barred by the terms of subparagraph (a) of the claim and grievance procedure.

(c) A claim was presented to the carrier for W. B. Rutland with respect to the use of Engine 170 on June 17, 1964 (p. 122). However, a different fireman, W. E. McManus, was first-out on the fireman's extra list on the occasion in question and would have been entitled to the assignment. Consequently, Rutland is not the proper claimant. Since no claim was ever presented for McManus, any claim on his behalf is now barred by the terms of subparagraph (a) of the claim and grievance procedure.

(d) No claim regarding the use of road locomotives at Sherman Yard on September 22, 1964, has ever been presented to the carrier on behalf of B. W. Splawn (p. 120). However, such a claim was made with respect to June 24, 1964, and has been progressed to decision by the carrier's Manager of Personnel. Similarly no claim regarding the use of Engine 179 at the Hearne Yard on August 18, 1964 has ever been presented to the carrier in behalf of L. H. Whiteacre (p. 123). However, such a claim was made on behalf of V. R. Blakley and has been progressed to decision by the Manager of Personnel. Neither of these two claims has been docketed for conference by the General Chairman of the BLF&E.

(e) Claims have been presented to the carrier pursuant to the claim and grievance procedure with respect to the other alleged violations listed on pages 119-121 and 122-123 of the Byron affidavit and have been progressed to decision by the carrier's Manager of Personnel. However, the General Chairman of the BLF&E has not subsequently docketed any of these claims for conference.

36. With respect to the specific allegations in Part IV (pages 118-123) of the Byron affidavit:

(a) Paragraphs (1) through (3) are true.

(b) Paragraph (4) is not true insofar as it implies that deadman controls are required on locomotives which perform yard switching, other than yard locomotives operated without firemen. See Answer of Board 282 to BLF&E Question 61, quoted in paragraph 33 of this affidavit.

[63] (c) Paragraph (5) is true, except for the date opposite the name of B. W. Splawn. See paragraph 35(d) of this affidavit.

(d) So far as this affiant is aware, paragraph (6) is not true. See paragraph 34 of this affidavit.

(e) Paragraph (7) accurately quotes BLF&E Question No. 10 and the answer thereto. Otherwise, paragraph (7) merely states legal conclusions which are erroneous insofar as they are in conflict with the answer of Arbitration Board No. 282 to BLF&E Question No. 61. See paragraph 33 of this affidavit.

(f) Paragraph (8) is not true. See paragraph 34 of this affidavit.

[64]

PART VI

Alleged Substitution of Switchmen for Firemen

37. Contrary to the claim made in Part VI of the Byron affidavit (pages 123-127), it is not true that the carrier has required ground members of switching crews from which firemen have been eliminated to ride in the cab to perform duties formerly performed exclusively by firemen. Occasionally, switchmen do ride on the cab while performing switchmen's duties, which duties include and have always included transmission of signals and maintenance of lookout. That was equally true before Award 282; switchmen shared signal-passing and lookout functions in the cab with firemen. Switchmen's duties in that regard have not been changed since Award 282.

38. The carrier's practices in this connection have been sanctioned expressly by Board 282, in its answer to BLF&E Question 32:

BLF&E

Question No. 32: May the carrier, as a method of operation in road freight and yard service, place a yardman or brakeman on the left side of the locomotive cab to perform lookout or pass signals; in effect performing duties formerly assigned to firemen?

Answer: It was not the intent of the Award that the removal of firemen-helpers from yard engines should be followed by the substitution of other yard service employees in the cab to perform signal-passing and lookout functions formerly performed *exclusively* by firemen-helpers. *If, however, other yard service employees formerly shared signal-passing and lookout functions in the cab with firemen-helpers, they may now continue to perform such functions.* [Emphasis added]

39. Of the specific claims concerning the Miller Yard at Dallas, Texas, made in paragraph (3) on pages 124-125 of the Byron affidavit, only one, by H. S. Mounts for July 31, 1964, has been progressed in accordance with the parties' claim and grievance procedure to decision by the carrier's Manager of Personnel, and that claim has not been docketed for conference by the General Chairman of the BLF&E. No claims have ever been presented with respect to the other alleged infractions of Award 282 specified in paragraph (3).

40. With respect to the specific allegations in Part VI, pages 123-127, of the Byron affidavit:

[65] (a) Paragraph (1) is true.

(b) Paragraph (2) is not true as indicated in paragraph 37 of this affidavit.

(c) Paragraphs (3) and (4) are not true insofar as they allege that the carrier has required switchmen to perform duties formerly performed exclusively by firemen. Moreover, with respect to the second entry in the tabulation in paragraph (3), concerning an alleged infraction on July 31, 1964, the true fact is that a helper was instructed to pass signals to the engineer from *outside* the locomotive, because of curvature in the track.

(d) BLF&E Questions 32, 86 and 56, and the answers of Arbitration Board No. 282 hereto, are accurately set forth in paragraphs (5) through (7). The legal conclusions stated in paragraph (5) are erroneous; as stated in the Board's answer to BLF&E Question 32, the Award allows yard service employees who formerly shared signal-passing and lookout functions in the cab with firemen to continue to perform such functions.

(e) Paragraph (8) is not true. See paragraph 37 of this affidavit.

[66]

PART VII

Orange Switcher No. 2

41. The claim made in Part VII of the Byron affidavit (pages 127-129) concerns the carrier's operation of a freight switching assignment known as Orange Switcher No. 2 without firemen since September 3, 1964. Pursuant to a 1945 agreement between predecessors in interest of the Southern Pacific Texas & Louisiana Lines and the Missouri Pacific Railroad, the operation of Orange Switcher No. 2 is alternated between the two carriers at two-month intervals. The Southern Pacific operates the switcher in April and May, August and September, and December and January.

42. When "blankable" firemen's assignments were initially designated by the carrier in March 1964 pursuant to Part B(1) of Section II of Award 282, and when newly established firemen's assignments were listed in June 1964 at the expiration of the first three-month interim period specified in Part B(3) of Section II of the Award, Orange

Switcher No. 2 was not being operated by the Southern Pacific and thus could not be listed by that carrier. When newly established firemen's assignments were listed again on September 3, 1964, at the expiration of the second three-month interim period specified in Part B(3) of Section II of the Award, Orange Switcher No. 2 was being operated by the Southern Pacific but through inadvertence was not included on the September list. (The error did not affect the number of vetoes which the BLF&E received). When newly established assignments were listed again three months later, the carrier discovered the earlier error and listed Orange Switcher No. 2. However, the assignment was not vetoed by the local BLF&E chairman. Since the Award, Orange Switcher No. 2 has always been operated, when it was operated by the Southern Pacific, with crews to which firemen were not assigned.

43. Since the Southern Pacific operated Orange Switcher No. 2 without firemen during August 1964, in accordance with the answer of Arbitration Board No. 282 to BLF&E Question 6(b),¹³ the error in the [67] carrier's September listing should have been apparent to the BLF&E, which nevertheless did not call the matter to the carrier's attention. By way of contrast, in the December listings the carrier called the organization's attention to an error in the designations which had deprived the BLF&E of a veto to which it was entitled during the period from September through November, on the H&TC Seniority District, and on its own initiative granted the BLF&E an extra veto for the following three-month period, by way of compensation. (See Exhibit K hereto.)

44. The claim made in the Byron affidavit concerns only the period subsequent to September 30, 1964, when the carrier overlooked Orange Switcher No. 2 in designating newly established assignments. However, apart from the period

¹³ The answer to BLF&E Question 6(b) was as follows: "New regular assignments, established during an interim period between listings, may be operated without a fireman unless or until included in the local chairman's subsequent veto."

from September 3 to September 30, 1964, when the carrier's August-September turn to operate the switcher ended, the carrier was entitled to operate Orange Switcher No. 2 as a "blanked" assignment, without fireman, because the carrier designated the switcher as a "blankable" assignment in December and the BLF&E did not veto that designation.¹⁴ On the other hand, the carrier should have used firemen on the switcher during the period from September 3 to September 30 and doubtless would have done so had it been aware of its error.

45. The BLF&E has presented a number of claims to the carrier regarding the operation of Orange Switcher No. 2 without firemen, both with respect to the period from September 3 to September 30, 1964, and with respect to other times. A number of these claims have been progressed to decision by the carrier's Manager of Personnel. The claims concerning the period from September 3 to September 30 would be paid if these various claims were docketed for conference in accordance with the claim and grievance procedure, so that all the claims concerning the switcher might be disposed of, but so far the General Chairman of the BLF&E has not seen fit to follow that procedure. The claims for the period from September 3 to September 30 which have been progressed to decision by the Manager of Personnel are as follows:

Claimant	Date
E. R. Castilaw	September 3, 1964
O. Stockton	September 8, 1964
E. R. Castilaw	September 9, 1964
[68] H. J. Huval	September 10, 1964
N. Stockton	September 16, 1964
N. Stockton	September 23, 1964
N. Stockton	September 24, 1964
N. Stockton	September 29, 1964

¹⁴ To confirm its understanding of the Award in this regard, the carrier has submitted Question No. 8 in Exhibit A hereto to the reconvened Arbitration Board.

Other claims with respect to the period from September 3 to September 30 either have not been presented to the carrier or have not been appealed and accordingly are now barred by the terms of subparagraphs (a) and (b) of the claim and grievance procedure.

46. With respect to the specific allegations in Part VII, pages 127-129, of the Byron affidavit:

(a) Paragraphs (1) through (4) are true.

(b) With respect to paragraph (5), it is true that the services of firemen were required on all trains, including Orange Switcher No. 2, by rules in effect on the day preceding the effective date of the Award; and it is also true that firemen should have been used on Orange Switcher No. 2 during the period from September 3 to September 30, 1964. It is not true that Award 282 required the use of firemen in the operation of Orange Switcher No. 2 after September 30, 1964.

[69]

PART VIII

Use of Junior Freight Pool Firemen When Extra List Is Exhausted

47. The claim made in Part VIII of the Byron affidavit (pages 129-133) is that the carrier has violated rules in effect before the Award because for a time it called the most junior freight pool firemen available to fill temporary vacancies in firemen's assignments when the extra list was exhausted, rather than the "first-out" man in the pool. However, the practice, since discontinued, involves no violation of Award 282.

48. As stated in the Byron affidavit, rules in effect on the day preceding the effective date of Award 282 provided that "when firemen who are assigned to pool freight service are used in emergency, for yard service or in road service off their assigned territory, they will be called on a first-in, first-out basis. . . ."

49. From May to December 1964, the carrier called the most junior man available, not the "first-out" man, when

it became necessary to call a fireman assigned to pool freight service to fill a temporary vacancy in a "non-blankable" assignment because the extra board was exhausted. On such occasions the junior men were paid the difference between the pay for the emergency job and what they would have earned had they taken their regular turns in freight pool service. The carrier followed the practice of using the junior men because it was of the view at the time that the men in question were in effect being assigned temporarily to the extra board. Accordingly, it was believed that the carrier was obliged to call the most junior fireman; the carrier may "force" men onto the extra boards only in accordance with reverse seniority. Subsequent interpretations by Arbitration Board, answering BLF&E Question No. 74(a), confirmed that the carrier is required to assign the most junior men first when it becomes necessary to assign additional men to the extra boards:

BLF&E

Question No. 74(a)—It is the position of certain carriers that they are allowed to "blank" regular assignments on a seniority district to the extent that C-6 and C-7 helpers-firemen are forced to the extra board, or in some instances [70] furloughed, and thereby deprived of a regular job on which they would otherwise be working under the schedule rules and in accordance with their seniority. Is this position of the carriers correct?

Answer—If additional extra men are needed on the extra board, the carrier may require C-6 or C-7 men, beginning with the most junior man, to relinquish blankable assignments and thereupon be placed on the extra board. C-6

and C-7 firemen may not be furloughed as a result of the application of this Award when the carrier is operating blankable jobs without firemen.

This understanding was explained to the BLF&E when claims were made for fifty-mile penalty payments on behalf of the first-out men who were thus "run around."

50. The General Chairman of the BLF&E responded in substance that the regular assignments of the junior men had not been blanked and thus those men had not been "forced" to the extra list; instead, presumably, he believed that the men retained their status as pool freight service employees. That analysis leads to the conclusion that under the "first-in first-out" rule use of men on the occasions in question is governed not by reverse seniority but by standing on the freight pool list.

51. Thus the issue between the parties concerned only the application of the "first-in first-out" rule and an alleged violation of that rule, not any violation of the Award. The carrier has since concluded that the BLF&E was correct in its contentions regarding the "first-in first-out" rule. Accordingly, the practice of calling the junior fireman was discontinued December 1964, and this affiant so advised Mr. Byron during discussions concerning the pay of the junior men who had been called to perform emergency service.

52. Claims have been filed in accordance with the claim and grievance procedure on behalf of some but not all of the men for whom [71] claim is made in Part VIII of the Byron affidavit. Specifically:

(a) Claims have been filed on behalf of Firemen L. R. Hobbs for May 29, 1964; B. W. Splawn for May 30, 1964; H. B. Baskin for June 9 and June 20, 1964; H. L. Roberts for June 21, 1964; and F. Loughmiller for June 22, 1964. These claims were progressed to decision by the Manager of Personnel and were then docketed for conference by the General Chairman of the BLF&E in accordance with the parties' claim and grievance procedure. Conference was

held on October 30, 1964, at which time the claims in question were passed at the carrier's request because the carrier wished to consider its position further. For reasons indicated in paragraph 51, the carrier has since concluded upon further consideration that these claims probably should be paid; it will pay them when conferences are resumed if such conferences confirm its present views.

(b) Claims have also been filed on behalf of Firemen B. W. Splawn for June 16, 1964; H. L. Roberts for June 16, July 31, and August 3, 1964; and H. B. Martin for August 2, 1964. These claims have been progressed to decision by the Manager of Personnel but have never been docketed for conference. However, what is stated about payment of claims in subparagraph (a) above is true of these claims, too, if they are docketed for conference.

(c) Claims filed on behalf of Fireman H. L. Roberts for May 27 and May 28, 1964, were rejected by the Superintendent of Roberts' seniority district on September 29, 1964, and again on October 29, 1964. These claims were not appealed to the Manager of Personnel and consequently are barred by the provisions of subparagraph (b) of the claims and grievance procedure.

(d) No claims have ever been presented to the carrier on behalf of Firemen L. H. Whiteacre for May 26, 1964, or D. C. Colston for June 23, 1964. Accordingly, claims on behalf of these men for those dates are now barred under subparagraph (a) of the claim and grievance procedure.

53. With respect to the specific allegations in Part VIII, pages 129-133, of the Byron affidavit:

[72] (a) Paragraphs (1) through (3) are true except for the second sentence in paragraph (3). With respect to that sentence, emergency assignments ordinarily were filled in the past with men other than men assigned to the freight pools,—e.g., with "cut-off" men.

(b) Paragraph (4) is true only to the extent indicated in paragraphs 49 and 51 of this affidavit.

(c) With respect to paragraph (5), it is not true that the carrier has engaged in any "arbitrary practice of disregarding the rules and practices that were in effect on the day preceding the effective date of the Award." It is true that instead of the firemen standing first-out named in the last

column of the tabulation in paragraph (5), the junior firemen named in the second column of the tabulation were used in the assignments and on the dates specified in the first and fourth columns of the tabulation. In each such case, the fireman named in the second column was the most junior fireman on the freight pool list available at the time.

(d) Paragraph (6) is not true.

[73]

PART IX

Time and One-Half

54. The claim made in Part IX of the Byron affidavit (pp. 133-136) is that since July 1964, the carrier "has taken the position" that Award 282 "abrogated the National 5-Day Work-Week Agreement" and consequently has refused to pay time and one-half to yard service employees who are requested to work more than five days in a seven day week. (Para. 3) That is not true; the carrier does not claim and has never claimed that Award 282 abrogated the Work-Week Agreement.

55. On the four occasions between August 3 and October 10, 1964, specified in paragraph (4) on pages 134-135 of the Byron affidavit, a fireman ordinarily assigned to yard service was called on a so-called "off-day" to fill a temporary vacancy in a job which is not subject to elimination under Award 282 because the extra list protecting the assignment was exhausted at the time. The use of the men on the occasions in question was in accordance with Award 282.

56. The time and one-half provisions in the portion of the Work-Week Agreement quoted on page 134 of the Byron affidavit apply only to "regularly assigned yard and hostling service employees *worked as such* more than five straight-time eight-hour shifts in a work week" consisting of five consecutive work days with two days off in each seven. Other provisions in the Work-Week Agreement govern payment of time and one-half to extra firemen and prescribe such payment only for work in excess of 11 straight-time yard assignments in any semimonthly period. On the four occasions on which the claim made in Part IX

of the Byron affidavit is based, the firemen in question had in effect served as extra firemen in accordance with Award 282, rather than on their regular yard assignments. Consequently, the carrier originally was of the view that the firemen were not subject to the provisions of the Work-Week Agreement governing pay of regularly assigned yard service employees. On the other hand, the BLF&E was of the contrary view that the firemen were, and remained, regularly assigned yard service employees and were therefore entitled to time and one-half. Thus the dispute between the parties concerned only [74] the scope and construction of the Work-Week Agreement, not the application of Award 282.

57. Claims for time and one-half on behalf of the four firemen were progressed under the parties' claim and grievance procedure to the carrier's Manager of Personnel, who rejected the claims and advised the BLF&E of the carrier's position with respect to the matter. The General Chairman of the BLF&E advised the carrier of his contrary position, and notified the carrier that he did not accept the decisions as final. In order to resolve the question, the Manager of Personnel expressly invited the General Chairman to docket one of these cases for conference in accordance with the parties' established procedures. (See letter dated January 6, 1965, from L. C. Albert to A. C. Byron, attached as Exhibit L hereto.) However, the General Chairman has not done so. Upon further consideration, the carrier has concluded that Mr. Byron's interpretation of the Work-Week Agreement is probably correct. Consequently, the four claims here in question will certainly be paid if they are docketed for conference in accordance with established procedures and those conferences confirm the carrier's present views. The question should not then arise again in the future.

58. With respect to the specific allegations in Part IX, pages 133-136, of the Byron affidavit:

(a) Paragraph (1) is true, except that the Work-Week Agreement was not ratified by the firemen employed by the carrier until 1956. In addition to the provision as to firemen regularly assigned to yard service, quoted in para-

graph (1), the Work-Week Agreement contains other provisions which govern payment of time and one-half to extra firemen, described in paragraph 56 of this affidavit.

(b) Paragraph (2) is true.

(c) Paragraph (3) is not true except as stated in paragraphs 55 through 57 of this affidavit.

(d) Paragraph (4) is not true insofar as it alleges that the carrier refuses to abide by the Work-Week Agreement. Paragraph (4) [75] is true otherwise, except that fireman G. H. Stokes laid off on October 8, 1964.

(e) Paragraph (5) is not true. It is not the practice of the carrier to require firemen regularly assigned to yard switching jobs to work in excess of five days per week, except in emergencies such as were involved in the four cases mentioned above. It is not the practice of the carrier to refuse to pay time and one-half when such work is necessary; so far as this affiant is aware, that has happened only on the four occasions mentioned above, the last of which was on October 10, 1964, and for reasons stated in paragraph 57 of this affidavit should not happen at all in the future. It is not true that the carrier has excused and justified failure to pay time and one-half "with the explanation that such practice is authorized by the Arbitration Award." The carrier's original view with respect to the four cases mentioned above was that payment of time and one-half was not required by the Work-Week Agreement; the carrier's only contention regarding Award 282 is one that is not in dispute, that the Award justified the temporary assignments to non-blankable jobs on the four occasions in question.

E. S. LOHRKE.

CITY OF WASHINGTON,
District of Columbia, ss:

Subscribed and sworn to before me this 18th day of March, 1965.

(SEAL.)

ELIZABETH F. LEONARD,
Notary Public.

My commission expires September 14, 1966.

• • • • •

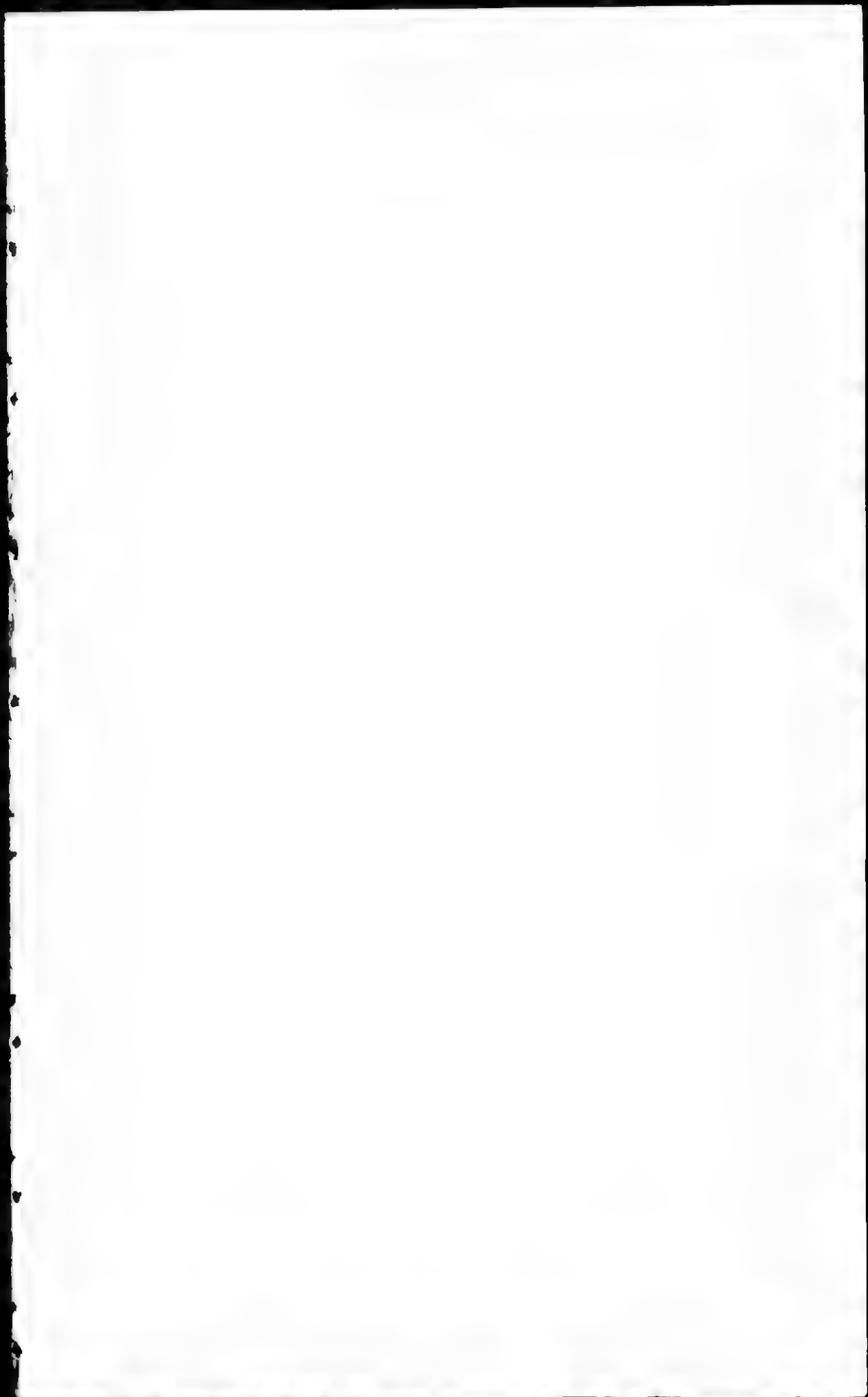


EXHIBIT C-1

6-63-1170M

(SEE INSTRUCTIONS ON BACK)

SOUTHERN PACIFIC COMPANY

ENGINEMEN—S-2370-A
(Revised 5-63)

TIME RETURN AND DELAY REPORT OF ENGINE AND TRAIN EMPLOYEES

Lafoya Ave
1 DIVISION

2 STATUS

10-22-64
3 DATE

4 RUN NO.

5 REPORT NO.

Length of Time Off Duty Previous to This Trip 6	FIRST WENT ON DUTY			FINALLY WENT OFF DUTY			Total Time On Duty 13	Total Trip Time 14	Period Before Road Overtime Commences 15	TIME CLAIMED										Occu- pation 24	NAMES OF EMPLOYEES 25	EMPLOYEE ACCOUNT NUMBER 26	
	Place 7	Date 8	Time 9	Place 10	Date 11	Time 12				Straight Time Miles 16	Overtime		SWITCHING OR DELAY				OTHER						
											Hrs. 17	Min. 18	Code 19	Hrs. 20	Min. 21	Code 22	Hrs. 23	Min. 24					
			M			M													Engr.				
			M			M													Frmn.				
			M			M													"				

27 REMARKS:

*Claim 1 yard day
account of carrier working
yard assignments without
freeman (claim me too - over -*

27A Engine No. For Held-Away from Home Terminal

(THIS SPACE FOR TIMEKEEPER ONLY)

Time Day Began At Held-Away from Home Terminal or Tie-Up Point 28	Time Set For Train to Depart 29	Train Coupled Together At 30	Engines On At 31	Time of Arrival At Designated Switch or Point Where Term. Delay Begins 32	Time of Arrival On Designated Relieving Track or Terminal 33
M	M	M	M	M	M

Train No. 44	Engine No. 45	DEPARTURE		ARRIVAL		Time Went off Duty 51	Kind of Service Frl. Pass. Work D. H. 52	Time Table Miles 53
		Station 46	Time Went On Duty 47	Time Train Departed 48	Station 49	Time Train Arrived 50		
			M	M		M	M	
			M	M		M	M	
			M	M		M	M	
			M	M		M	M	
			M	M		M	M	
			M	M		M	M	

54 Name of Conductor

I certify this report to be correct:

Angelo J. Rosolani Jr.
55 Signature

56 Occupation

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EXHIBIT C-1—Continued

DELAY REPORT

PLACE 57	DURATION OF DELAY			CAUSE OF DELAY—(Show Separately Each Delay and Amount of Time Due to Each Cause) 61	62 INSTRUCTIONS
	TIME BEGAN 58	TIME ENDED 59	TIME ELAPSED 60		
				<p>To lose a day, on the Alger Extra Board. I missed October 22- 1964, I had not to work. To not being up to about around 282. Could have work job 307. 1130-PM</p>	<p>1. This report shall be rendered for all engine and train crews including yard and switching crews. Enginemen, firemen, conductors, flagmen, train baggagemen and trainmen shall also use this form when reporting individually. The report shall be rendered and signed by the engineman for the engine crew and by the conductor for the train crew. If there is no engineman or conductor it shall be rendered and signed by the ranking employee whose time is reported thereon. Reports shall be numbered consecutively for each month beginning with No. 1.</p> <p>2. Run or Job No. of assignment on which duty is performed shall be written in space provided therefor.</p> <p>3. The report shall be dated as of the date on which the employee first goes on duty.</p> <p>4. Under "Remarks" shall be shown any irregularities of the hours of duty. If an employee is released from duty for any period between the time of first going on duty and the time finally relieved from duty, such fact must be shown under "Remarks" giving the place at which the release is given, the time at which it began, and the time at which it ended. Time off duty for meals taken by yard crews shall also be shown under "Remarks." If the whole or part of service is deadheading the place at which the deadheading began and ended and the train on which the employee deadheaded will be shown. When a crew or employee is relieved before the completion of a trip the name of the conductor or engineman of the crew relieving or the name of the employee relieving will be shown.</p> <p>5. Where, or time is shown A. M. or P. M. shall be given.</p> <p>6. In reporting delays the cause of each delay, the place at which it occurred, the time it began and the time ended shall be given. Delays due to different causes shall be shown separately.</p> <p>7. All delays to passenger trains shall be shown. Delays to freight trains of less than 10 minutes at any one place need not be shown. Delays to yard and switching crews whose service is confined entirely to yard limits need not be shown.</p> <p>(a) Time returns should be completed and rendered at end of each trip or service to insure arrival in timekeeping office at earliest date possible.</p> <p>(b) Claims for initial and/or terminal deadheading, initial and/or terminal delays, HART and other service for which no time payment is claimed should be explained under "Remarks."</p>

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EXHIBIT C-2

Rev. 3-64-90M

TIME CORRECTION NOTICE

R. P. B.
C. S. 560-BHouston - Oct. 29, 1964Emm. A. J. Trosclair Jr.Avondale

Referring to time return No. 1 train dated 10-22-64
 claiming 1 yard day acct. of carrier working yard assignments without a fireman.
 Please note item(s) No. 2 below.

E. P. Evans
 TITLE: Supt.

1. Time claimed in Column No. _____ denied. You have been allowed _____
2. Claim is not supported by agreement provisions and is denied.
3. Explanation: _____

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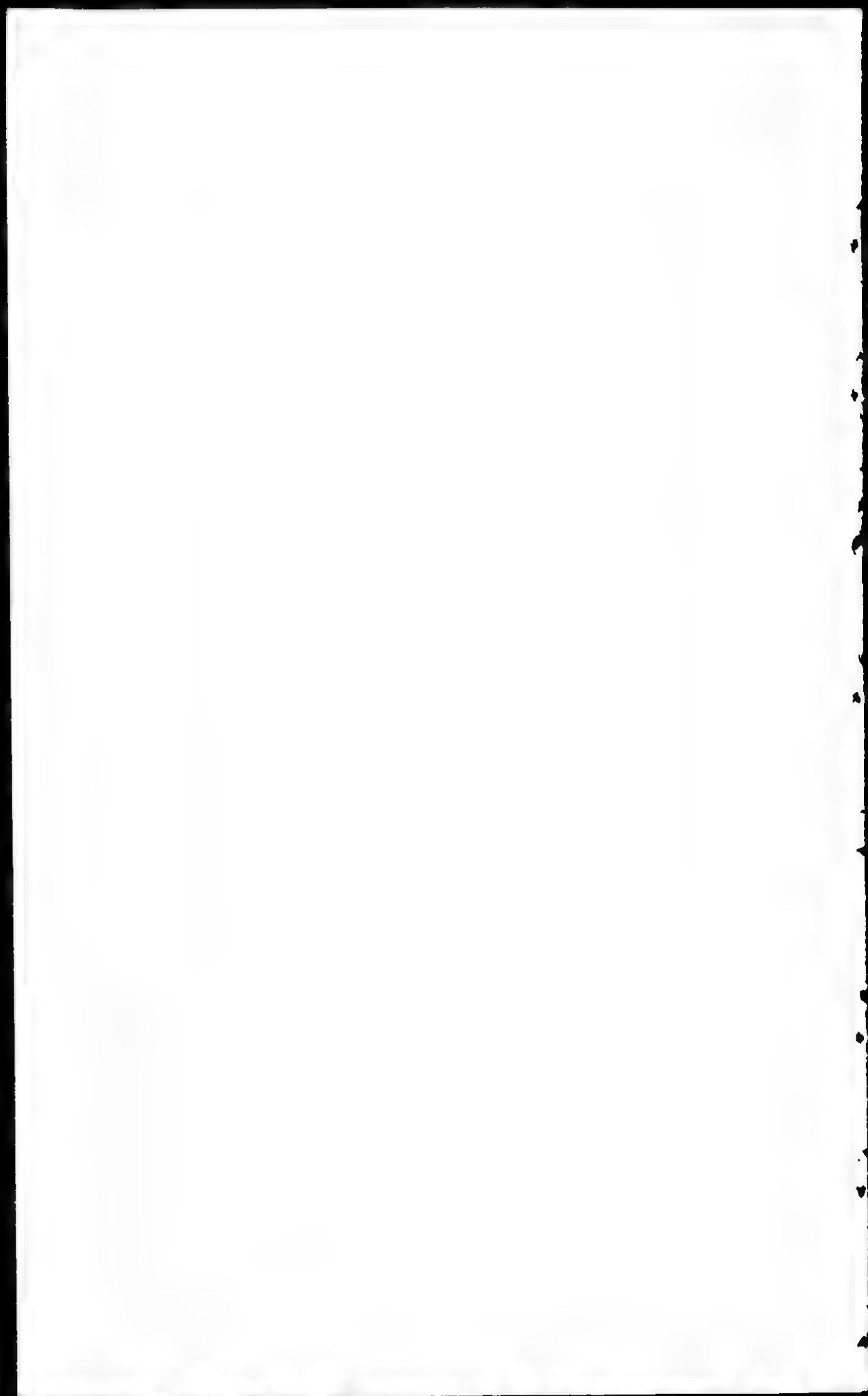


EXHIBIT C-3

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Endeavor Lodge No. 267

Claim of Fireman A. J. Trosclair for 1 yard day on Sept.
23, 24, 25, Oct. 22 and 24, 1964.

Westwego, La.
Nov. 12, 1964.

Mr. E. P. Evans
Superintendent, Laf. Div.
Houston, Texas.

Dear Sir:

I have time correction notices in favor of Fireman A. J. Trosclair for one yard day on Sept. 23, 24, 25, Oct. 22 and 24, 1964 and dated as shown in Caption.

Fireman Trosclair was on the Fireman's Extra Board on these various dates and being first out should have worked Job No. 307 which was blanked, each date.

Therefore, I am requesting that this claim be allowed as per Caption.

Yours truly,

W. J. ADAMS,
Local Chairman
Lodge 267 BLF&E.

EXHIBIT C-4

November 25, 1964.

Mr. W. J. Adams
Local Chairman, BofLF&E
940 Avenue F
Westwego, Louisiana

Dear Sir:

Yours, November 12, 1964, captioned:

“Claim of Fireman A. J. Trosclair for 1 yard day
on September 23, 24, 25, October 22 and 24, 1964”

Claims as appealed in behalf of Fireman A. J. Trosclair for payment of one yard day, September 23, 24, 25, October 22 and 24, 1964, is without basis and is respectfully declined.

Arbitration Award No. 282 is being complied with and there is no basis for your protest and claim.

Yours truly,

J.K.W.

JKW-jp

EXHIBIT C-5

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Endeavor Lodge No. 267

Claim of Fireman A. J. Trosclair for one yard day on
September 23, 25, October 22 and 24, 1964.

Westwego, Louisiana
December 6, 1964

Mr. E. P. Evans
Superintendent, Laf. Div.
Houston, Texas.

Dear Sir:

With reference to your letter of November 25, 1964 and mine of November 12, 1964 pertaining to the above Caption, I regret that we are unable to accept the decision rendered by you.

Therefore, I am submitting this claim to my General Chairman for further handling with the Management.

Yours truly,

W. J. ADAMS,
Local Chairman
Lodge 267 BLF&E.

EXHIBIT C-6

GENERAL GRIEVANCE COMMITTEE

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS

Southern Pacific Company, T and L Lines
617 Bettes Building, 201 Main Street, Houston 2, Texas

A. C. Byron
General Chairman

December 29, 1964.

Claims for days lost on Algier's firemen's extra list when carrier operated assignments without a helper fireman. Fireman A. J. Trosclair, September 23, 24, 25, October 22 and 24, 1964. Fireman G. H. Stokes October 21, 24, November 5, 10, and 11, 1964. Fireman W. J. Adams November 6 and 10, 1964.

Mr. L. C. Albert,
Manager of Personnel,
Southern Pacific Company,
Houston, Texas.

Dear Sir:

The above claims have been declined by superintendent Evans and appealed to us for further handling.

Arbitration Board 282's answer to BLF&E Question 60 (B) rendered September 16, 1964 reads:

"The carrier may not refuse to call a C-6 or C-7 fireman helper to fill a vacancy on a blankable yard assignment where the engine is equipped with a deadman control if the refusal to so call would result in the C-6 or C-7 fireman helper losing a day or more of work."

Fireman A. J. Trosclair lost the days of September 23, 24, 25, October 22 and 24, 1964 when Yard Job #307 was operated without a fireman.

Fireman G. H. Stokes lost the days of October 21, 24, November 5, 10, and 11, 1964 when Job #311 was operated without a fireman.

Fireman W. J. Adams lost the day of November 6, 1964 when carrier operated Jobs Nos. 304, 307 and 311 without a fireman and lost the day of November 10, 1964 when Job No. 311 was operated without a fireman.

Claim for time lost is supported by Article 27, Section 16, BLF&E Sunset Agreement.

Truly yours,

A. C. BYRON,
General Chairman.

EXHIBIT C-7

January 26, 1965.

Claim of firemen on the Algiers firemen's extra list for alleged days lost when yard assignments were operated without a helper fireman as follows: Fireman A. J. Trosclair, September 23, 24, 25, October 22 and 24, 1964; Fireman G. H. Stokes, October 21, 24, November 5, 10, and 11, 1964; and Fireman W. J. Adams, November 6 and 10, 1964:

Mr. A. C. Byron
General Chairman, BLF&E
617 Bettis Building
Houston, Texas 77002

Dear Sir:

Your letter December 29, 1964.

On September 23, 24, 25, October 22 and 24, Yard Assignment No. 307 at Avondale was operated without a fireman because the fireman's position on this assignment was blanked. Your claim in behalf of Fireman A. J. Trosclair for alleged lost earnings on enumerated dates is respectfully declined.

On October 21, 24, November 5, 10, and 11, 1964, Yard Assignment No. 311, Avondale, was operated without a fireman. The fireman's assignment was blanked. Your claim in behalf of Fireman G. H. Stokes for alleged lost earnings, each date enumerated, is respectfully declined.

On November 6, the Carrier did operate Yard Assignments 304, 307, and 311 without a fireman as the firemen's assignments on these cited yard assignments were blanked, as was the case of Yard Assignment No. 311 of November 10, 1964. Your claim in behalf of Fireman W. J. Adams for an arbitrary penalty day on November 6 and 10, 1964, alleging he should have been called for service is respectfully declined.

We do not agree that the Answer to BLF&E Question 60 (B), rendered September 16, 1964, by the members of

Arbitration Board 282, supports a claim of this nature and therefore the provisions of Article 27, Section 16, BLF&E Sunset Agreement, likewise would not be applicable.

Yours truly,

L. C. ALBERT,
E.S.L.

bcc—Mr. E. P. Evans—Houston

ESL-mb

EXHIBIT C-8

GENERAL GRIEVANCE COMMITTEE

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Southern Pacific Company, T and L Lines

617 Bettes Building, 201 Main Street, Houston 2, Texas

A. C. BYRON
General Chairman

January 27, 1965.

Claims for days lost on Algiers firemen's extra list when carrier operated assignments without a fireman helper. Fireman A. J. Trosclair, September 23, 24, 25, October 22, 24, 1964. Fireman G. H. Stokes October 21, 24, November 5, 10, 11, 1964. Fireman W. J. Adams November 6 and 10, 1964.

Mr. L. C. Albert,
Manager of Personnel,
Southern Pacific Company,
Houston, Texas.

Dear Sir:

Your letter of January 26, 1965 declining the above claim is not accepted as final.

Truly yours,

A. C. BYRON,
General Chairman.

• • • • •

EXHIBIT K

SOUTHERN PACIFIC COMPANY—TEXAS AND LOUISIANA LINES
Houston, Texas

December 3, 1964.

CERTIFIED MAIL

RETURN RECEIPT REQUESTED

Mr. R. F. Kramer—Houston

Mr. E. W. Guinn—Austin

Mr. A. M. Blount—Ennis

Local Chairmen, BLF&E

In accordance with provisions of Section II, Part B(3) of Arbitration Award No. 282 issued November 26, 1963, we are setting out below the number of Yard assignments which have been established or discontinued since the date of our letter of September 3, 1964 on the H&TC seniority district:

Assignment		Total Number of:	
Established	Discontinued	Increase	Decrease
DALLAS-MILLER			
None	No. 306	—	1
HOUSTON TERMINALS			
No. 92	Nos. 70, 123	1	2

On June 3, 1964 report, 7 relief assignments were reported as having been discontinued since March 4, 1964, namely, Relief No. 1 at Forth Worth; Relief No. 1 at Hearne; Relief Nos. 1 and 2 at Ennis; and Relief Nos. 1, 2, and 3 at Dallas-Miller, whereas these assignments were merely blanked. Accordingly with the one assignment (No. 75) established in Houston Terminals, the total number of assignments as of June 3, 1964 should have been reported as being 52 instead of 45 in that the total number of assignments as of March 4, 1964 was 51. This made no change in the number of permitted "Veto" assignments

which was 5 and remained 5. However, with the net increase of 4 assignments on the September 3, 1964 report, the total number of assignments came to 56, providing for 6 instead of 5 "Veto" assignments. Although the above listing produces a total of 54 assignments as of December 3, 1964 and drops the number of permitted "Veto" assignments back to 5, you are hereby granted the permission to designate 6 "Veto" assignments for the following 3-month period as an adjustment for the past 3-month period.

S. E. TANNER,
Superintendent

L. A. PATTERSON,
Superintendent.

cc: General Chairman, BLF&E, Mr. L. C. Albert.

STIPULATION AS TO ISSUES AND FACTS CONCERNING MOTION OF
BLF&E FOR SUPPLEMENTAL RELIEF

[Filed March 31, 1965]

It is hereby stipulated by the Brotherhood of Locomotive Firemen & Enginemen (hereinafter called the "BLF&E") and the Southern Pacific Company, by their respective counsel, that at the hearing set for April 5, 1965, on the pending motion by the BLF&E for supplemental relief, the issues stated in Parts I and II of this stipulation will be the only issues tendered by either party to the Court for decision. It is further stipulated that "agreed facts" stated herein will be deemed established for purposes of the aforesaid motion only * * *.

II

Specific Issues

* * * * *

E. Use of Road Locomotive for Particular Yard Switching Operations.

Agreed Facts:

On occasion, road locomotive not equipped with deadman controls, used on trains which the carrier operates from Ennis through Dallas and Sherman to Dennison, Texas, have been used by the carrier, when the trains reached Dallas and Sherman, for two switching operations: (1) disconnecting from the trains those cars which are destined for Dallas or Sherman, and then (2) connecting with the trains cars destined for other points. On such occasions, the road locomotives are not used either to disassemble or assemble the strings of cars disconnected from or connected with the trains. However, the road locomotives are operated by yard crews while performing the two switching operations; they are then returned to the freight crews. On occasion the yard crews which thus temporarily operate the road locomotives do not include firemen.

Issue:

Does the operation of road locomotives by yard crews which do not include firemen, under the circumstances described above, violate Award 282?

* * * * *

4. All claims concerning the subject matter of Parts VII, VIII, and IX of the Byron affidavit are withdrawn.

/s/ M. KRAMER
Milton Kramer
Schoene & Kramer
1625 K Street, N.W.
Washington, D. C.

HAROLD C. HEISS
Heiss, Day & Bennett
Keith Building
Cleveland 15, Ohio
*Attorneys for the Brotherhood of
Locomotive Firemen and Enginemen.*

/s/ FRANCIS M. SHEA
Francis M. Shea
Shea & Gardner
734 Fifteenth Street, N.W.
Washington, D. C.
*Attorney for the Southern Pacific
Company.*

Dated: March 31, 1965.

* * * * *

ORDER WITH RESPECT TO MOTION BY THE BROTHERHOOD OF
LOCOMOTIVE FIREMEN AND ENGINEMEN FOR SUPPLEMENTAL
RELIEF AGAINST THE SOUTHERN PACIFIC COMPANY, J. E.
WOLFE AND E. H. HALLMANN.

[Filed September 13, 1965]

This Court having sustained the Award made by Arbitration Board No. 282 and filed with this Court pursuant to Public Law 88-108, 77 Stat. 132, in *Brotherhood of Locomotive Firemen and Enginemen v. Chicago, Burlington & Quincy Railroad Co.*, 225 F. Supp. 11, aff'd, 118 U.S. App. D. C. 100, 331 F.2d 1020, cert. denied, 377 U.S. 918;

This Court having, on May 11, 1964, entered an order enjoining the Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as the "BLF&E") and certain others from striking over any dispute as to the meaning or application of the Award and reserving jurisdiction over applications for such further orders as might be necessary or appropriate for the construction, carrying out or enforcement of the said order of May 11, 1964 or of the judgment upon the Award or of any legal obligation resulting therefrom (see *In Re Certain Carriers, Etc.*, 229 F. Supp. 259);

The BLF&E having filed, on February 11, 1965, a Motion for Supplemental Relief Based upon Public Law 88-108 and Judgment on Arbitration Award, Against Southern Pacific Company, J. E. Wolfe, Chairman of National Railway Labor Conference, and E. H. Hallmann, Chairman of Western Carriers Conference Committee, together with a supporting affidavit by Allen C. Byron, in which it was alleged that the Texas and Louisiana Lines of the Southern Pacific Company (hereinafter referred to as the "Southern Pacific") had violated or was violating the Award in a number of respects and in which the Court was requested to enjoin future such alleged violations and to order the Southern Pacific to compensate the individuals injured by past such alleged violations for their damages;

Southern Pacific having filed an affidavit by E. S. Lohrke in opposition to the said motion for supplemental relief;

Southern Pacific and the BLF&E having filed a Stipulation as to Issues and Facts Concerning Motion of BLF&E for Supplemental Relief, dated March 31, 1965, in which certain of the claims made by the BLF&E in its motion were withdrawn and the issues with respect to the remaining claims were set forth together with agreed-upon facts pertaining to such issues;

Southern Pacific and the BLF&E having filed memoranda of points and authorities in support of their respective positions, a hearing having been held on April 5, 1965 and oral argument having been had, and this Court having determined to hold the matter in abeyance pending rulings by Arbitration Board No. 282 upon the issues as to the meaning and application of its Award which were disputed by the parties in connection with the motion for supplemental relief as modified by the stipulation (see *In Re Certain Carriers Etc.*, 240 F. Supp. 290);

Southern Pacific having submitted to Arbitration Board No. 282, prior to April 5, 1965, certain questions deemed by it to raise the disputed issues as to the meaning and application of the Award, the BLF&E having submitted to Arbitration Board No. 282, after April 5, 1965, certain questions deemed by it to raise the disputed issues as to the meaning and application of the Award, and Arbitration Board No. 282 having ruled upon those questions on May 6, 1965 and filed its rulings with this Court;

The BLF&E having filed an Amendment to Motion Filed February 11, 1965, by Brotherhood of Locomotive Firemen and Enginemen for Supplemental Relief, in which amendment the BLF&E sought relief only with respect to the separation by the Southern Pacific of 79 C(6) firemen (helpers) from employment after they had refused offers of comparable jobs made at the same time to a multiple number of such firemen (helpers) and with respect to the practice of the Southern Pacific in not using firemen (helpers) assigned to an extra board on fireman (helper) jobs which have been blanked (*i.e.*, discontinued or abolished) by the carrier pursuant to the Award;

The BLF&E having filed a memorandum of points and authorities in support of its Amendment to Motion, the Southern Pacific having filed a memorandum of points and

authorities in opposition thereto, a hearing having been held on June 7, 1965 and oral argument having been had;

The Court, upon due consideration of the aforesaid matters, having determined that: (1) the answer by Arbitration Board No. 282 on May 6, 1965 to Southern Pacific Question No. 2 and BLF&E Question No. 1 establishes, as the Southern Pacific concedes, that the carrier's procedures were improper under the Award in offering a multiple number of comparable jobs within a seniority district at the same time to an equal number of C(6) firemen (helpers) rather than offering such jobs to a single firemen (helper) at a time, beginning with the most junior firemen (helper) in the seniority district; (2) the Court does not have jurisdiction of the claims for compensation made by the BLF&E on behalf of the 79 individual C(6) firemen (helpers) who were separated from employment by the Southern Pacific after refusing offers of comparable jobs made pursuant to the improper procedures, and the Court would decline to pass upon such individual claims under the principle of *forum non conveniens* if it did have jurisdiction of them, but the Court has the right in its equitable discretion to annex conditions to the injunction granted in its order of May 11, 1965; (3) in the exercise of this right to annex conditions to its injunction, and in view of the circumstances revealed by the record with respect to these particular claims, the Court will make a ruling as to the substantive rights of the 79 former C(6) firemen (helpers) asserted in their behalf by the BLF&E in this proceeding and leave to a local tribunal the adjustment and computation of their individual claims as follows: (a) each of the 79 former C(6) firemen (helpers) should be paid the wages which he would have earned during the additional period, if any, in which he would have been employed by the Southern Pacific, subject to his duty to mitigate or avoid damages to the extent reasonably possible in the exercise of due diligence; (b) the said former C(6) firemen (helpers) should not be held to have waived their rights to such compensation under the circumstances here involved by accepting severance pay under the Award without protesting the procedures followed by the Southern Pacific; (c) the claims of the said former C(6) firemen (helpers) should not be

barred under the circumstances here involved by any failure on their part to invoke or to exhaust the contract grievance procedure established in agreements between the Southern Pacific and the BLF&E; and (d) the claims of the said former C(6) firemen (helpers) should be referred for determination, in accordance with the principles herein declared, by the special board of adjustment heretofore created by the Southern Pacific and the BLF&E or by some other tribunal of a local character which may be agreed upon by the Southern Pacific and the BLF&E; (4) the answer by Arbitration Board No. 282 on May 6, 1965 to Southern Pacific Question 1(e) and BLF&E Question 2, when considered in connection with prior answers by the Board to questions submitted to it, is ambiguous and obscure; (5) jurisdiction to interpret the meaning of the Award is in Arbitration Board No. 282, rather than this Court, and in view of the ambiguity and obscurity of the Board's answer to Southern Pacific Question 1(e) and BLF&E Question 2 the Court should not determine whether, as claimed by the BLF&E, the Award requires that firemen (helpers) assigned to an extra board be used in jobs which have been abolished under the Award if such a fireman (helper) is available and otherwise a fireman (helper) assigned to the extra board would lose a day or more of work; and (6) the Court, therefore, will deny that part of the amended motion for supplemental relief relating to the use of firemen (helpers) from the extra boards in blanked jobs without prejudice to a further submission of this matter by any party to the Board and, after a ruling by the Board thereon, to this Court;

WHEREFORE, IT IS HEREBY ORDERED:

1. That the continued effect of paragraph 1 of the order of this Court, dated May 11, 1964, in the above-entitled, proceeding, insofar as such paragraph permanently enjoins the Brotherhood of Locomotive Firemen and Enginemen, its officers, agents, employees, members and all persons acting in concert with them, from authorizing, calling, encouraging, permitting or engaging in any strikes or work stoppages with respect to the Texas and Louisiana Lines

of the Southern Pacific Company, and from picketing the premises of the Texas and Louisiana Lines of the Southern Pacific Company, over any dispute as to the meaning or application of the Arbitration Award on which judgment heretofore has been entered in the above-entitled proceeding, is conditioned as follows:

(a) Upon consent by the Southern Pacific, within five days after receipt of a written request therefor by the BLF&E, to the submission, for consideration and determination in accordance with the principles declared herein, of claims on behalf of any of the 79 former C(6) firemen (helpers) who authorize the BLF&E to submit such claims on their behalf to a tribunal agreed upon by the Southern Pacific and the BLF&E prior to such written request; *provided*, that if either the Southern Pacific or the BLF&E objects to the submission of such claims to the special board of adjustment heretofore created by them and they are unable to agree upon the creation of some other tribunal of a local character to consider and determine such claims, the issue as to the tribunal which is to consider and determine the claims may be submitted by either party to this Court for further consideration; and *provided further*, that this paragraph shall be inapplicable to claims on behalf of any of the 79 former C(6) firemen (helpers) which are disposed of by agreement between the Southern Pacific and the BLF&E.

(b) Upon payment within a reasonable time by the Southern Pacific to each such former C(6) firemen (helper) who is found by the special board of adjustment or other tribunal to be entitled to compensation under the principles determined by this Court of the amount of compensation which the special board of adjustment or other tribunal finds should be paid under the principles determined by this Court.

2. The motion by the BLF&E for supplemental relief is denied with respect to the claims described in Section II-A of the Stipulation as to Issues and Facts Concerning Motion of BLF&E for Supplemental Relief, without prejudice to the right of any party to raise or re-raise before Arbitra-

tion Board No. 282 any issues as to the meaning or application of its Award which may be involved in such claims and without prejudice to the right of any party to submit or re-submit the claims to this Court after the Board has ruled upon such issues.

3. In all other respects, the motion by the BLF&E for supplemental relief is denied without prejudice.

Dated: September 13, 1965

/s/ ALEXANDER HOLTZOFF,
United States District Judge.

MOTION BY BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN FOR SUPPLEMENTAL RELIEF BASED UPON PUBLIC LAW 88-108, AND JUDGMENT ON ARBITRATION AWARD, AGAINST SOUTHERN PACIFIC COMPANY AND OTHER CARRIERS REPRESENTED BY THE EASTERN, WESTERN AND SOUTHEASTERN CARRIERS' CONFERENCE COMMITTEES.

[Filed December 1, 1965]

Comes now Brotherhood of Locomotive Firemen and Enginemen and moves the Court for an order declaring that the Southern Pacific Company and all other carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees and that are party to the above-entitled proceedings, are obligated, pursuant to the judgment heretofore entered in this proceeding upon the Award rendered by Arbitration Board No. 282, to pay the claims of their respective locomotive firemen (helper) employees for loss of wages and loss of other forms of remuneration caused said employees by the carriers' violations of the Arbitration Award, and the propriety of such claims is dependent on the Award of Arbitration Board No. 282, but is not dependent upon the claims being filed and processed by, or on behalf of, the individual employee within the time and in the manner prescribed by Section 17 of a certain collective bargaining agreement entered into by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, and the Switchmen's Union of North America with the Eastern, Western and Southeastern Carriers' Conference Committees on August 11, 1948, which granted pay raises and other forms of remuneration to the engineers' crafts, the firemen's (helpers') crafts, and the switchmen's crafts.

As grounds for said Motion, the Brotherhood shows (as more fully set forth in the affidavits accompanying this Motion) as follows:

(A) That on or about February 11, 1965, the Brotherhood filed a Motion for Supplemental Relief in the above-entitled proceeding against Southern

Pacific Company, supported by an affidavit subscribed and sworn to by the Brotherhood's general chairman on the Texas and Louisiana lines of the Southern Pacific Railroad, namely Allen C. Byron, wherein was set forth in detail nine major kinds of grievances consisting either of actions that violated the terms of the Arbitration Award, or of actions that were contrary to agreements, rules, regulations, interpretations, and practices that were in effect prior to the Award but which Southern Pacific maintained had been modified by the Arbitration Award.

(B) Subsequent to the filing of the Brotherhood's Motion for Supplemental Relief, Southern Pacific acknowledged that the actions complained of in Part V and Part VII of the Allen C. Byron affidavit were violations of the Arbitration Award, and certain money claims by employees based upon said violations were paid by Southern Pacific. But other money claims and grievances by other employees based upon the same kind of violations, Southern Pacific has refused to pay for the alleged reason that they were not filed within the time, or were not processed in the manner, prescribed by the provisions of a certain collective bargaining agreement entered into by and between the Brotherhood and the Eastern, Western and South-eastern Carriers' Conference Committees on August 11, 1948. A copy of said agreement is attached to the Allen C. Byron affidavit filed herewith.

(C) Southern Pacific and substantially all of the other carriers who were party to Arbitration Board No. 282 proceedings and were also party to the injunction proceeding before this Court in the above-entitled action on May 11, 1964, refuse to pay numerous money claims or otherwise satisfy the employees' lawful grievances growing out of the carriers' violations of the Arbitration Award, or the carriers' improper enforcement of the Arbitration Award, the basis of such refusals to pay the employees' claims or satisfying their grievances being that they were not filed with

the carrier within sixty days from the date of the occurrence on which the claim or grievance is based, or the claims and grievances were not processed by appeal to the highest officer designated by the carrier to handle employees' claims and grievances in the manner and within the time prescribed by the national agreement of August 11, 1948.

(D) The national agreement of August 11, 1948, contains, among other provisions, a Section 17 which established a sixty-day time limit on the filing of employees' time claims and grievances based upon contract rule violations and the improper imposition of penalties upon employees by the carriers. Section 17 also establishes a system for the appeal of employees' claims and grievances to the highest carrier officer designated to handle employees' claims and grievances. If a claim or grievance is denied by the carrier's highest officer authorized to handle employees' claims and grievances, the claim or grievance will become barred by the provisions of Section 17 if the employee fails to institute proceedings before the National Railroad Adjustment Board or before a system board of adjustment established pursuant to Section 3, Second, of the Railway Labor Act, within six months after the claim or grievance is denied by the carrier's highest officer.

(E) The Brotherhood does not recognize that the time limits and the system of appeals established by Section 17 of the August 11, 1948 national agreement for the processing of claims and grievances resulting from schedule violations by carriers and the imposition of penalties upon employees have any application to or bearing upon the carriers' duty to satisfy valid claims and grievances growing out of violations of the Arbitration Award by the carriers, or upon the right of the Brotherhood to apply to this Court for orders requiring carriers to carry out or enforce the judgment entered in this proceeding on May 11, 1964, upon the Award by Arbitration Board No. 282 and the legal obligations resulting therefrom.

This motion is made pursuant to the order of this Court entered on May 11, 1964, in which the Court enjoined the Brotherhood and the employees it represents from authorizing, permitting, or engaging in any strike over any dispute as to the meaning or the application of the Award rendered by Arbitration Board No. 282; and in which this Court reserved jurisdiction for the purpose of enabling any of the parties to that proceeding to apply to this Court at any time for such further orders as may be appropriate for the carrying out or enforcement of the judgment entered in the proceeding based upon said Award or any rights arising therefrom.

WHEREFORE, the Brotherhood moves the Court to enter an order declaring that the right of the Brotherhood and of the locomotive firemen (helpers) it represents to require the carriers party to the above-entitled proceeding to comply with the judgment entered in that proceeding upon the Award by Arbitration Board No. 282 is not conditioned by the terms of the national agreement of August 11, 1948, and that the carriers are bound to satisfy such valid claims or grievances asserted by the employees, or on their behalf, as result or flow from the carriers' improper interpretations and applications of the Arbitration Award and the judgment based thereon, without regard to the terms of the collective agreement entered into on August 11, 1948, by and between the Brotherhood and the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees.

Respectfully submitted,

Of Counsel:

SCHOENE AND KRAMER
1625 K Street, N.W.
Washington, D. C. 20006

/s/ MILTON KRAMER.

HEISS, DAY AND BENNETT
622 Keith Building
Cleveland, Ohio 44115

/s/ HAROLD C. HEISS.

Date: December 1, 1965

AFFIDAVIT BY H. E. GILBERT IN SUPPORT OF MOTION BY
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
FOR SUPPLEMENTAL RELIEF BASED UPON PUBLIC LAW
88-108 AND JUDGMENT ON ARBITRATION AWARD AGAINST
SOUTHERN PACIFIC COMPANY

[Filed December 1, 1965]

Comes now H. E. Gilbert, and being first duly sworn, on oath deposes and says as follows:

(1) This affiant is a resident of Cleveland, Ohio, and has held the office of president of the Brotherhood of Locomotive Firemen and Enginemen continuously since September 1, 1953; and has seniority and employment rights as a locomotive fireman (helper) and locomotive engineer on the Gulf, Mobile and Ohio Railroad.

(2) This affiant was, and is, a member of Arbitration Board No. 282, established by Public Law 88-108, 77 Stat. 129.

(3) The Brotherhood is the duly designated and authorized representative, for the purposes of the Railway Labor Act, of the crafts of locomotive firemen (helpers) employed on approximately 160 of the major railroads that operate within the United States and are concerned with this proceeding. Said railroads served upon the Brotherhood the Section 6 notice dated November 2, 1959, referred to in Public Law 88-108, and substantially all of said railroads were represented by the Eastern, Western and Southeastern Carriers' Conference Committees throughout the hearings held by Arbitration Board No. 282, and such railroads are bound by the Award rendered by said Board on November 26, 1963, relative to the dispute over the employment of locomotive firemen on Diesel locomotives in freight and yard service which followed the serving of the November 2, 1959 notice.

(4) Interminable disputes have developed between the Brotherhood's local chairmen and general chairmen on the vast majority of the said railroads and the managements of those railroads regarding the proper interpretation and application of the provisions of the Arbitration

Award, and great numbers of claims for lost wages and lost employment rights have been asserted by or on behalf of the firemen employed on said railroads because of actions and decisions on the part of railroads which the Brotherhood and its general chairmen and local chairmen believe to be arbitrary and otherwise improper interpretations and applications of the Arbitration Award.

(5) The members of Arbitration Board No. 282 have reconvened on ten occasions since May 17, 1964, to consider disputes that have developed between the carriers and the Brotherhood's general chairmen and local chairmen over the interpretation and application of the Arbitration Award, and more than 200 interpretations of the Award, or interpretations of interpretations of the Award, have been issued by the Board since May 17, 1964.

(6) The officers of the Brotherhood are advised and do believe that under Public Law 88-108, and under the Railway Labor Act, and under the injunction issued against the Brotherhood and its members on May 11, 1964, in the above-entitled proceeding, neither the National Railroad Adjustment Board, nor any system board of adjustment, nor any state or federal court, has authority to determine the proper interpretation and application of the provisions of the Arbitration Award, and that only the United States District Court for the District of Columbia has jurisdiction to require the railroads to comply with the terms of the Arbitration Award.

(7) The railroads that are subject to the Arbitration Award now refuse, and have been refusing since about February 11, 1965, to pay numerous valid claims asserted by or on behalf of locomotive firemen (helpers) for lost wages caused by or resulting from the railroads' wrongful interpretations and applications of the Arbitration Award, and as reason for such refusal the railroads assert that the claims were not filed with the railroads within the allowable time limits for the filing and the processing of claims growing out of contract violations as established by a certain collective bargaining agreement entered into on the 11th day of August, 1948, by the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen

and Enginemen, and the Switchmen's Union of North America with the railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees.

(8) The Allen C. Byron affidavit filed herewith in the above-entitled proceeding provides illustrations of the conditions and circumstances under which the Southern Pacific Company, and substantially all other railroads subject to the Arbitration Award, have been and are declining and refusing to pay valid claims by employees growing out of violations by the railroads of the Arbitration Award, on the grounds that such claims are barred by Section 17 of the national agreement of August 11, 1948.

Further affiant saith not.

H. E. GILBERT.

STATE OF OHIO,
County of Cuyahoga, ss:

SUBSCRIBED AND SWORN TO BEFORE ME this 13th day of
October, 1965.

ELMER A. BLAZY,
Notary Public.

My Commission Expires Feb. 10, 1969.

AFFIDAVIT BY ALLEN C. BYRON IN SUPPORT OF MOTION BY
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
FOR SUPPLEMENTAL RELIEF BASED UPON PUBLIC LAW
88-108 AND JUDGMENT ON ARBITRATION AWARD AGAINST
SOUTHERN PACIFIC COMPANY, ETC.

[Filed December 1, 1965]

Allen C. Byron, being first duly sworn, on oath deposes and says as follows:

(1) That he is a resident of Houston, Texas, and is general chairman of the Brotherhood of Locomotive Firemen and Enginemen's General Grievance Committee on the Texas and Louisiana lines of the Southern Pacific Railroad (hereinafter sometimes referred to as "Southern Pacific"), that he has held the position of general chairman of said General Grievance Committee since October 3, 1953; and that he was first employed as a locomotive fireman on the Southern Pacific Railroad on December 6, 1922, was promoted to locomotive engineer on August 9, 1942, and continues to hold seniority and employment rights on the Texas and Louisiana lines of the Southern Pacific Railroad.

(2) That Southern Pacific has at all times material hereto operated regularly scheduled freight trains and pool freight trains [2] from Ennis, Texas, through Dallas and Sherman, Texas, to the end of Southern Pacific's line at Dennison, Texas, where rail connections are made with the lines of other interstate railroads. A large switching yard, known as Miller Yard, is operated at Dallas, and a smaller switching yard is maintained at Sherman, Texas. The freight trains that operate from Ennis to Dennison, through Dallas and Sherman, are often two miles or more in length.

(3) When the trains from Ennis reach Miller Yard at Dallas, Texas, it is necessary that the freight cars destined for Dallas be switched out of the train, after which other freight cars that are destined for Sherman and for Dennison, and also other cars destined to be delivered to connecting carriers at Dennison, must be switched into the trains. Similar switching work is performed when the trains reach the switching yard at Sherman, Texas.

(4) Frequently the freight cars that must be switched at Miller Yard and at the Sherman Yard are of such great number and weight that it becomes essential or desirable that the switching be performed by the same locomotives that propel the train. Such locomotives generally consist of four or more diesel power units and they are not equipped with a deadman control. When road locomotives are thus used to perform the yard switching work necessary to breaking up and making up the freight trains at Dallas and Sherman, Texas, the locomotives are manned by regular yard crews working at the Dallas Yard or the Sherman Yard. Such yard crews [3] frequently have only one engineman in the crew, namely, the engineer, in the cab of the locomotive.

(5) The operation of any locomotive without a fireman (helper) being a member of the yard crew, in normal yard switching service with the locomotive not equipped with a deadman control, is prohibited by Part B(5) of Section II, of the Arbitration Award rendered by Arbitration Board No. 282. Part B(5) of the Award reads as follows:

“After the expiration of 37 days following the effective date of this Award, the carrier shall not be required to use firemen (helpers) on other than steam power in any class of freight services (including all mixed, miscellaneous, and unclassified services) or in any class of yard service (including all transfer, belt line, and miscellaneous yard services), other than in crews designated by the local chairman, pursuant to the provisions of paragraphs B(2) and B(3) of this Award, except as may be necessary to provide jobs for firemen (helpers) whose employment rights are retained as provided in Parts C and D of this Award; provided that no yard locomotive shall be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition.”

(6) The foregoing practice was protested by this affiant on the ground that it is contrary to the requirements of the Arbitration Award. Said protest took the form of a

claim filed on behalf of Fireman F. Loughmiller for one day's pay at the Miller Yard beginning at 11:59 p.m. on September 5, 1964, that being the occasion when a road locomotive not equipped with a deadman control was used by Southern Pacific to perform yard switching service in the Miller Yard and Fireman Loughmiller was rested and ready for service and, [4] on the basis of his seniority, should have been called to work and assigned to the crew operating the road locomotive. A copy of said protest addressed to L. C. Albert, Manager of Personnel, Texas and Louisiana Lines, Southern Pacific Railroad, marked Exhibit "A", is attached hereto and made a part hereof.

(7) The said L. C. Albert, by letter dated January 7, 1965, addressed to this affiant, denied that Southern Pacific was violating the Arbitration Award when it assigned a yard crew to a road locomotive to perform yard switching service, and the locomotive was not equipped with a deadman control and a fireman (helper) was not a member of the crew. The claim filed on behalf of Fireman Loughmiller was accordingly denied by L. C. Albert. A copy of L. C. Albert's letter, dated January 7, 1965, and designated Exhibit "B", is attached hereto and made a part hereof.

(8) A recital of the foregoing facts was included in Part V (pages 118 to 123) of the Allen C. Byron affidavit that was filed in support of a Motion by the Brotherhood of Locomotive Firemen and Enginemen for Supplemental Relief Based Upon Public Law 88-108, and Judgment on Arbitration Award, filed on or about February 11, 1965, in the United States District Court for the District of Columbia in the above-entitled proceeding.

(9) Thereafter Southern Pacific reconsidered its position, and on or about May 3, 1965, Southern Pacific entertained and paid a number of claims similar to the claim filed on behalf of Fireman Loughmiller, but Southern Pacific refuses to pay similar claims by [5] the following employees:

L. H. Whitacre—December 11, 24, 26, 1964;
January 2, 1965

W. L. Wells —December 31, 1964; January 1, 1965

A. L. Lewis —January 6, 11, 13, 29, 1965

E. W. Mangan —January 7, 1965
R. R. Costlow —July 25, 1964
R. J. Bentrca —July 26, 1964
L. H. Whitacre—September 19, October 16, 1964
A. M. Blount —November 8, 1964
V. R. Blakley —December 23, 1964; January 9, 11,
23, 1965
W. N. Reed —November 22, 1964; January 12, 26,
1965, March 19, 21, 1965, April 4, 22,
24, 1965

(10) The reason given by Southern Pacific for refusing to pay the claims listed in paragraph (9), *supra*, is that those claims were not filed with Southern Pacific within the time prescribed by a certain collective agreement entered into by and between the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Engineers, and the Switchmen's Union of North America, and the Eastern, Western and Southeastern Carrier's Conference Committees on August 11, 1948. The provisions of this agreement, which Southern Pacific asserts bar the said claims, are contained in Section 17 of the agreement, and Section 17 has been incorporated in the firemen's schedule agreements now in effect on the Texas and Louisiana lines of the Southern Pacific Railroad. A copy of the August 11, 1948, agreement, identified as Exhibit "C", is attached hereto and made a part hereof.

(11) Southern Pacific was a party to the August 11, 1948, agreement, and Section 17 of said agreement was incorporated in and made a part of the firemen's schedule agreements in effect on the Texas and Louisiana lines of Southern Pacific Railroad.

[6] (12) At pages 121 to 123 of the Allen C. Byron affidavit filed in support of the Brotherhood's Motion for Supplemental Relief in the above-entitled proceedings on February 11, 1965, this affiant related that Southern Pacific has from time to time since the Arbitration Award became effective operated yard locomotives in yard switching service without a fireman (helper) being a member of the crew, while the deadman control with which such locomotives are required to be equipped was not in operating condition.

(13) The operation of a yard locomotive that is not equipped with a deadman control, or with the deadman control not in operating condition, and without a fireman (helper) being a member of the crew, is forbidden by Part B(5), Section 2, of the Arbitration Award. Such practice is also contrary to the Board's answer to BLF&E Question No. 10. Said question and answer read as follows:

BLF&E Question No. 10

"Is the employment of a helper-fireman required on a yard assignment if the deadman control on a single manned yard locomotive becomes inoperative after a shift has commenced?"

Answer: "If the deadman control on a single manned yard locomotive becomes inoperative after a shift has commenced, this locomotive should not be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition."

(14) Claims were filed on behalf of the following firemen for one or more day's pay because the named firemen should have been called and deadheaded from Lufkin to Shreveport, Louisiana, and used as members of yard switching crews at Shreveport, Louisiana, [7] on the dates indicated on yard locomotives that were used in switching service without the deadman control being in operating condition:

C. H. Barfield—June 17, 19, 23, 1964

C. M. Luce—June 24, 25, 1964

(15) The claim by Fireman C. M. Luce was paid, but Southern Pacific declined to pay the claim by C. H. Barfield. The Barfield claim was denied for the reason that the claim was not filed with Southern Pacific within 60 days following the dates on which Southern Pacific violated the Arbitration Award, as is required by Section 17 of the August 11, 1948, agreement, according to Southern Pacific.

(16) Southern Pacific operates a terminal and switching yard facility at Beaumont, Texas. The carrier's main line

track goes through Beaumont and on east, through a city called Orange, Texas, located 28 miles east of Beaumont. Orange, Texas, is not a terminal point on the Southern Pacific lines. There is no switching yard at Orange, but several industrial plants are located at Orange and those plants require an extensive amount of switching service daily.

Switching service is furnished the industrial plants at Orange by Southern Pacific and by the Missouri Pacific Railroad, pursuant to an agreement between these carriers by which the two carriers alternate in furnishing the service continuously for two-month periods. Southern Pacific provided the switching service at [8] Orange, Texas, during April and May, 1964, and during August and September, 1964, and during December, 1964, and January, 1965.

(17) One of the combination road-and-switching locomotives operated daily by Southern Pacific from Beaumont to Orange to perform switching service and return is known as Orange Switcher No. 2, Run No. 891. When the time arrived for Southern Pacific to list the road and yard assignments that were newly established during the period from June 3 to September 3, 1964, as required by Part B(3) of Section II of the Arbitration Award, Orange Switcher No. 2, Run No. 891, was not listed as a blankable assignment. Accordingly, under the terms of the Arbitration Award, a fireman (helper) should have been a regularly assigned member of the crew operating Orange Switcher No. 2, Run No. 891, from September 3 to September 30, 1964, but the crew did not include a fireman.

(18) Claims were accordingly filed on behalf of certain firemen who should have been called by Southern Pacific to work as firemen (helpers) on Orange Switcher No. 2, Run No. 891, during September, 1964, and those claims were progressed by this affiant to L. C. Albert, Manager of Personnel on the Texas and Louisiana lines of Southern Pacific, in a letter addressed to L. C. Albert and dated November 25, 1964. A copy of said letter, designated Exhibit "D", is attached hereto and made a part hereof.

(19) In a letter addressed to this affiant and dated December 11, 1965, L. C. Albert declared that Orange Switcher No. 2, [9] Run 891, did not need to be listed as a regular

assignment according to the provisions of Part B(3), Section II, of the Award, and hence it could properly be operated without a fireman being a member of its crew during the month of September, 1964. The firemen's claims were accordingly denied. A copy of said letter, designated Exhibit "E", is attached hereto and made a part hereof.

(20) The foregoing facts were set forth in Part VII of the Allen C. Byron affidavit filed in support of the Brotherhood's Motion for Supplementary Relief that was filed February 11, 1965, in the above-entitled proceeding.

(21) Later, on or about May 3, 1965, Southern Pacific acknowledged that claims for lost wages by those firemen who stood to be called to work as a part of the crew operating Orange Switcher No. 2, Run No. 891, between September 3 and September 30, 1964, were valid. Claims by the following firemen for wages for the dates indicated were paid by Southern Pacific:

E. R. Castilaw—September 3, 9, 1964

O. Stockton—September 8, 11, 22, 1964

N. Stockton—September 13, 16, 23, 24, 29, 30, 1964

(22) Claims on behalf of the following firemen, based upon the operation of Orange Switcher No. 2, Run No. 891, in violation of the Arbitration Award were filed before September 30, 1964, with the Southern Pacific's Superintendent at Beaumont, Texas:

H. J. Huval—September 4, 6, 10, 1964

E. R. Staha—September 21, 1964

E. S. Coleman—September 5, 7, 14, 17, 18, 25, 26, 28, 1964

I. C. Dean—September 15, 1964

V. L. Alston—September 20, 27, 1964

[10] (23) Claims in behalf of claimants listed in paragraph (22), *supra*, were filed by the Brotherhood's local chairman at Beaumont, and were denied by Southern Pacific's Superintendent at Houston. The brotherhood's local chairman at Beaumont appealed the claims to the General Chairman, this affiant, who did present said claims to Southern Pacific's highest officer designated to handle such claims

on or about May 10, 1965, but they were denied by said officer for the alleged reason that the claims were subject to Section 17 of the August 11, 1948, national agreement and that they had not been appealed to the carrier's highest officer authorized to handle such claims within the time prescribed by Section 17 of the August 11, 1948, agreement.

Further affiant saith not.

ALLEN C. BYRON.

STATE OF TEXAS,
County of Harris, ss:

SUBSCRIBED AND SWORN TO BEFORE ME this 19th day of October, 1965.

RUSSELL B. DAY,
Notary Public.

My commission is State Wide.

EXHIBIT "A"

December 22, 1964.

Claim of Fireman F. Loughmiller for 100 miles deadhead Ennis to Miller, one yard day at Miller on 11:59 p.m. job and 1' engine swap with Engineer Scott, September 5, 1964 and 100 miles deadhead Miller to Ennis, September 6, 1964, in addition to all other earnings allowed.

Claim for Fireman F. Loughmiller 100 miles deadhead Ennis to Sherman, one yard day at Sherman on Job 002, units 7444-929-720 and 7237 and 100 miles deadhead Sherman to Ennis, October 12, 1964 in addition to all other earnings allowed.

Mr. L. C. Albert,
Manager of Personnel,
Southern Pacific Company,
Houston, Texas.

Dear Sir:

The above claims were declined by Mr. Tanner and have been presented to me for further handling.

On September 5, 1964 during Engineer L. C. Scott's tour of duty on 11:59 p.m. yard assignment at Miller, he was instructed to abandon the engine he was using and get on the units on 257's train (7229-816-7220-7919). Engineer Scott used these engines to make the set out which 257 had and to make up 257's train. These engines were not equipped with deadman control and Engineer Scott did not have a fireman on the 11:59 p.m. yard assignment. Fireman F. Loughmiller was first out on the firemen's extra board at Ennis at the schedule time to have deadheaded by bus to Miller for this assignment and was fully rested for the job.

On October 12, 1964, train #257 arrived Sherman at about 9:10 p.m. The 3 p.m. yard assignment at Sherman had their engine on the ground, so this crew used the engines on train #257 and delivered the interchange cars to the Frisco Railroad. These engines on train #257 were not equipped with a deadman control and there was no fireman on the 3 p.m. yard assignment. Fireman F. Loughmiller was

first out on the firemen's extra board and should have been deadheaded to Sherman for the job.

This was a violation of Award of Arbitration Board 282, Part B-(5) and interpretation of Board 282 to BLF&E Question No. 10 rendered June 9, 1964.

Claims as made are supported by Article 26, Section 11, H&TC BLF&E Agreement.

These claims are identical to claims now being prepared by our Grand Lodge and our Chief counsel in Cleveland, Ohio for adjudication by judge Alexander Holtzoff and are being sent to them to be included therein.

Truly yours,

A. C. BYRON,
General Chairman.

EXHIBIT "B"

SOUTHERN PACIFIC COMPANY

913 Franklin Ave. — Houston, Texas 77002
Personnel Department

January 7, 1965.

L. C. ALBERT
MANAGER OF PERSONNEL
J. D. DAVIS
FIRST ASSISTANT
MANAGER OF PERSONNEL

B. W. ADAMS
R. CUNNINGHAM
W. K. HALL
R. W. HICKMAN
E. S. LOHRKE
ASSISTANT MANAGERS OF PERSONNEL

Claim of Fireman F. Loughmiller, who performed no service, for 100 miles at deadhead rate, Ennis to Miller, one yard day, Miller, 11:59 P.M.-7:59 A.M., one arbitrary hour exchanging engines, September 5, 1964, and 100 miles at deadhead rate, Miller to Ennis, September 6, 1964, in addition to any earnings which may have been allowed:

Claim of Fireman F. Loughmiller, who performed no service, for 100 miles at deadhead rate, Ennis to Serman, one yard day, Sherman, Yard Assignment 002, at four unit (744-929-720-7237) rate, and 100 miles at deadhead rate, Sherman to Ennis, October 12, 1964:

Mr. A. C. Byron
General Chairman, BLF&E
617 Bettes Building
Houston, Texas 77002

Dear Sir:

Your letter December 22, 1964.

Your facts, as set out in your letter, are correct. On September 5, 1964, the road diesel locomotive was used by the yard engineer at Miller to make a set-out from Train 257, after which the road crew took over their engine again to continue their assignment, and on October 12, 1964, the road diesel was used for one movement at Sherman to make a set-out from Train 257 by the yard engineer. In each case

the yard locomotive was equipped with a deadman control in good condition. Due to the heavy tonnage to be moved, the road units were used to expedite the movements.

We do not agree with your position that Answer to BLF&E Question No. 10 applies to road diesel locomotives.

Your claims in behalf of Fireman F. Loughmiller as captioned above are respectfully declined.

Yours truly,

L. C. ALBERT.

EXHIBIT "C"

AGREEMENT

This agreement made this 11th day of August, 1948, by and between the participating carriers listed in Exhibits A, B and C, attached hereto and made a part hereof and represented by the Eastern, Western and Southeastern Carriers' Conference Committees, and the employees shown thereon and represented respectively by the BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN and SWITCHMEN'S UNION OF NORTH AMERICA through their Conference Committees.

It Is HEREBY AGREED:

Section 1—Minimum Basic Daily Rates for Engineers and Firemen, and Helpers on Other Than Steam Power, in Freight Service.

* * * * *

Section 2—Basic Daily Rates for Engineers and Firemen, and Helpers on Other Than Steam Power, in Yard Service.

* * * * *

Section 3—Rate of Pay for Hostlers and Outside Hostler Helpers.

* * * * *

Section 4—Rate for Yard Switchtenders.

* * * * *

Section 5—Yard Conductors (Foremen) and Yard Brakemen (Helpers).

* * * * *

Section 6—Differential for Yard Conductors (Foremen).

* * * * *

Section 7—Short Turnaround Passenger Service.

* * * * *

*Section 8—Minimum Rate for Engineers and Motormen
Operating Motor or Electric Cars in Multiple
Unit Passenger Service.*

* * * * *

Section 9—Overtime in Yard and Hostler Service.

* * * * *

Section 10—Initial Terminal Delay—Passenger Service.

* * * * *

*Section 11—Initial Terminal Delay—Through Freight
Service.*

* * * * *

Section 12—Final Terminal Delay—Passenger Service.

* * * * *

Section 13—Final Terminal Delay—Freight Service.

* * * * *

Section 14—Held-Away-From-Home-Terminal.

* * * * *

Section 15—Conversion Rule.

* * * * *

Section 16—Eating and Sleeping Accommodations.

* * * * *

Section 17—Time Limit on Claims.

All claims or grievances arising on and after November 1, 1948 shall be handled as follows:

(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the company authorized to receive same, within sixty days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within sixty days from the date same is filed, notify the employee or his representative of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of the carrier as to other similar claims or grievances.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be taken within sixty days from receipt of notice of disallowance, and the representative of the carrier shall be notified of the rejection of his decision. Failing to comply with this provision the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances.

(c) The procedure outlined in paragraphs (a) and (b) shall govern in appeals taken to each succeeding officer. Decision by the highest officer designated to handle claims and grievances shall be final and binding unless within sixty days after written notice of the decision of said officer he is notified in writing that his decision is not accepted. All claims or grievances involved in a decision of the highest officer shall be barred unless within six months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved. It is understood, however, that the parties may by agreement in any particular case extend the six months period herein referred to.

(d) All rights of a claimant involved in continuing alleged violations of agreement shall, under this rule, be fully protected by continuing to file a claim or grievance for each

occurrence (or tour of duty) up to the time when such claim or grievance is disallowed by the first officer of the carrier. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

(e) This rule recognizes the right of representatives of the organizations parties hereto to file and prosecute claims and grievances for and on behalf of the employees they represent.

(f) This rule shall not apply to requests for leniency.

Note: With respect to all claims or grievances which arose or arise out of occurrences prior to November 1, 1948, such claims or grievances must be made on or before April 1, 1949, in the manner provided for in paragraph (a) hereof and if not progressed pursuant to the provisions of paragraphs (b) and (c) of this rule, the claims or grievances shall be barred. This provision does not apply to claims or grievances already barred under existing agreements.

This rule shall become effective on November 1, 1948, except on such roads as may elect to preserve existing rules and so notify the Employees' Committees on or before October 1, 1948.

Section 18

This agreement is subject to the approval of courts with respect to carriers in the hands of Receivers or Trustees.

Section 19

Except as otherwise provided in Section 2, existing differentials for divisions or portions thereof or mountain or desert territory as compared with valley territory, whether expressed in rates or constructive mileage allowances, are preserved.

Except as to Sections 1, 2, 3, 7 and 17, existing rules considered more favorable by the committees on individual

roads are preserved, provided notice is given as specified in this agreement.

Section 20

This agreement is in full and final settlement of the dispute growing out of notices served by the employees parties hereto and by the carriers parties hereto, on or about June 20, 1947, in accordance with Section 6 of the Railway Labor Act, of intended changes in agreements affecting rates of pay, rules and working conditions.

Section 21

This agreement shall be construed as a separate agreement by and on behalf of each carrier party hereto and those employees represented respectively by the BROTHERHOOD OF LOCOMOTIVE ENGINEERS, BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, and the SWITCHMEN'S UNION OF NORTH AMERICA, as heretofore stated; and shall remain in effect until changed or modified in accordance with the provisions of the Railway Labor Act, as amended.

SIGNED AT WASHINGTON, D. C., THIS ELEVENTH DAY OF AUGUST, 1948.

[Signatures]

* * * * *

EXHIBIT "D"

November 25, 1964.

Claim for 100 miles and all pro rata and overtime arbitrary allowances made on Orange Switcher No. 2, run #891, at local rate when operated without a fireman. Fireman O. Stockton August 3, 4, 8, 11, 12, 13, 14, 15, September 8, 16, 23, 24, 29, and 30, 1964. Fireman E. L. Castilaw September 3 and 9, 1964.

Mr. L. C. Albert,
Manager of Personnel,
Southern Pacific Company,
Houston, Texas.

Dear Sir:

The above claims were declined by Mr. Evans and have been appealed to us for further handling.

Orange Switcher #2 was working as a regular assignment on the date that the Superintendent furnished the Local Chairmen the list of various road jobs in accordance with Arbitration Award 282. This assignment was not listed therefore in accordance with Question and Interpretation 7 (B) under Paragraphs B-2 and B-3, rendered May 17, 1964 by Arbitration Board 282, his assignment would require the use of a fireman helper.

On the dates listed in caption, Firemen Stockton and Castilaw were first out on the firemen's extra list at Beaumont when this Orange Switcher was operated without a fireman helper.

Claim is made as captioned and supported by Article 27, Section 16, Sunset BLF&E Agreement.

Truly yours,

A. C. BYRON,
General Chairman.

EXHIBIT "E"

December 11, 1964.

SOUTHERN PACIFIC COMPANY

913 Franklin Ave. — Houston, Texas 77002

Personnel Department

L. C. ALBERT
MANAGER OF PERSONNEL
J. D. DAVIS
FIRST ASSISTANT
MANAGER OF PERSONNEL

H. W. ADAMS R. W. HICKMAN
R. CUNNINGHAM E. S. LOHRKE
W. K. HALL
ASSISTANT MANAGERS OF PERSONNEL

Claim of firemen, who performed no service, for an arbitrary penalty 100 miles at local rate and pro rata and overtime arbitrary allowances accruing to Orange Switcher No. 2, Run No. 891, when the assignment operated without a fireman on the following specified dates: Fireman O. Stockton, August 3, 4, 8, 11, 12, 13, 14, and 15; September 8, 16, 23, 24, 29, and 30, 1964. Fireman E. L. Castilaw, September 3 and 9, 1964:

Mr. A. C. Byron
General Chairman, BLF&E
617 Bettis Building
Houston, Texas 77002

Dear Sir:

Your letter November 25, 1964.

The assignment designated as Orange Switcher No. 2 normally is operated during the months of April and May, August and September, and December and January. On March 4, 1964, Orange Switcher No. 2 was not listed as a regular assignment as it was not in existence on that date. On August 1, 1964, the assignment was not placed under bulletin for a fireman. This handling is supported by Answers by Members of Board 282. On dates when extra men were not available, the assignment was blanked. On August 8 and September 8, 1964, claims were received by the Superintendent from Fireman O. Stockton and on September 3 and 9, 1964, from Fireman E. L. Castilaw. There

is no record of claims being filed by Fireman O. Stockton for August 3, 4, 11, 12, 13, 14, 15, September 16, 23, 24, 29, or 30, 1964, nor have the claims been filed by the Local Chairman in behalf of Fireman Stockton; therefore, it is our position that the only claims properly before us are those enumerated for Fireman O. Stockton for August 8 and September 8, 1964, and for Fireman E. L. Castilaw for September 3 and 9, 1964.

In view of the facts above, we do not agree that Article 27, Section 16, Firemen's Agreement, Sunset Lines, supports the claim of Firemen O. Stockton and E. L. Castilaw, as captioned above, and it is respectfully declined.

Yours truly,

L. C. ALBERT.

AFFIDAVIT OF E. S. LOHRKE IN OPPOSITION TO MOTION BY
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
FOR SUPPLEMENTAL RELIEF AGAINST THE SOUTHERN PACIFIC
COMPANY AND OTHER CARRIERS.

[Filed January 7, 1966]

E. S. Lohrke, being first duly sworn, deposes and says:

1. I am an Assistant Manager of Personnel for the Southern Pacific Company, Texas & Louisiana Lines (hereinafter called the "carrier"), and have held that position since January 1, 1953, except for the period from August 31, 1959 to April 15, 1962. Statements herein are based on my personal knowledge of the facts or on the carrier's records.

2. This affidavit is made in response to the affidavit of Allen C. Byron, dated October 19, 1965, in support of the motion by the Brotherhood of Locomotive Firemen and Enginemen (hereinafter called the "BLF&E") for supplemental relief against the Southern Pacific Company and other carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees. (Said affidavit is referred to hereinafter as the "second Byron affidavit." The earlier affidavit by Allen C. Byron filed in these proceedings, dated January 28, 1965, is referred to hereinafter as the "first Byron affidavit.")

A. The Time Limit on Claims Rule

3. The carrier and the BLF&E are among the parties to a national agreement dated August 11, 1948, between numerous carriers represented by the Carriers' Conference Committees and the BLF&E, the Brotherhood of Locomotive Engineers (the "BLE"), and the Switchmen's Union of North America (the "SUNA"). Section 17 of that agreement, entitled "Time Limit on Claims," established a procedure for the presentation and disposition of individual employees' claims and grievances, the operation of which on the Texas and Louisiana Lines of the Southern Pacific was described in detail in paragraph 6 on pages 3-4 of my affidavit of March 18, 1965, previously filed herein. Briefly, under section 17, "all claims and grievances must be pre-

sented in writing by or on behalf of the [2] employee involved, to the officer of the company authorized to receive same, within sixty days from the date of the occurrence on which the claim or grievance is based." The carrier must then notify the employee or his representative within sixty days that the claim has been disallowed or the claim "shall be considered valid and settled accordingly." A claim that has been disallowed at any level of the grievance procedure must be appealed to higher carrier officers within sixty days or "the matter shall be considered closed." A claim that is appealed must be acted upon by the carrier within sixty days or it "shall be considered valid." "All claims and grievances" disallowed by the highest carrier officer to whom they may be appealed—which officer on the Texas and Louisiana Lines of the Southern Pacific is the Manager of Personnel—"shall be barred unless within six months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved." In the case of claims concerning matters that are "continuing" in nature, each claimant's rights are protected if he continues "to file a claim or grievance for each occurrence (or tour of duty) up to the time when such claim or grievance is disallowed by the first officer of the carrier."

4. The provisions of section 17 of the national agreement of August 11, 1948, are as follows:

Section 17—Time Limit on Claims.

[See pp. 266-267, *supra*.]

* * * * *

[3] 5. Except for the "Note" at the end thereof, section 17 of the national agreement of August 11, 1948, is incorporated in the existing agreements between the BLF&E and the carrier. Also incorporated in those parties' existing agreements is a local agreement with respect to the construction of subsection (c) of section 17, which local agreement provides:

It is agreed that the following language:

"All claims or grievances involved in decision of the highest officer shall be barred unless within six months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved."

Contained in Paragraph (c) of [Section 17], shall be construed to mean that all claims or grievances shall be barred unless within six (6) months from the date of the highest officer's decision following conference held in accordance with the amended Railway Labor Act, proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved.

B. Joint Disputes Committee

6. The carrier and the BLF&E also are among the parties to a national agreement dated June 29, 1949, between numerous carriers represented by the Carriers' Conference Committees and the BLF&E, the BLE, and the SUNA. That agreement established a Joint Committee to which "any dispute or controversy . . . as to the interpretation or application of any of the terms" of the national agreement of August 11, 1948, "shall be referred" for a "final and binding" decision. A copy of that agreement is set out as Exhibit A hereto. I am informed and believe that disputes submitted to the Joint Committee are decided within a reasonable time and, if the parties request an expedited decision, can be decided within three or four months from the date of submission.

7. On July 1, 1952, at the request of the Chief Executives of the BLF&E, the BLE, and the SUNA, the First Division of the National Railroad Adjustment Board resolved that any case in which the application of the provisions of the agreement of August 11, 1948, is in issue will be held in abeyance until the issue involving the application of the

agreement of August 11, 1948, has been disposed of by the Joint Committee established by the agreement of June 29, 1949. Copies of the Chief Executives' request and the Board's resolution are attached hereto as Exhibits B and C, respectively.

[5] C. *Application of the Time Limit on Claims Rule to Claims and Grievances Involving Award 282*

8. As stated in the second Byron affidavit, the carrier has declined to pay certain claims on behalf of individual firemen, which claims were not presented to the carrier and appealed in the manner and within the time periods prescribed by the Time Limit on Claims Rule. However, the carrier and the BLF&E have entered into agreements providing that the claims in question—the claims listed in paragraphs 9 and 22 and the Barfield claim listed in paragraph 14 of the second Byron affidavit—are to be held in abeyance to be disposed of pursuant to the answer by Arbitration Board No. 282 to a question as to the applicability of contractual time limitations to such claims, to be submitted to the Board by the BLF&E. Copies of those agreements are attached hereto as Exhibits D, E, F, G, and H.

9. The Award by Arbitration Board No. 282 does not purport to modify or abolish the Time Limit on Claims Rule previously established by agreement of the parties, which Rule on its face applies to "[a]ll claims or grievances arising on and after November 1, 1948" And, Section II-A(1) of the Award expressly provides that: "All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award." Moreover, several answers by the Board to questions concerning the meaning or application of its Award demonstrate that claims or grievances based upon alleged violations of the Award, or as to which the Award is involved in some manner, are subject to the agreements of the parties concerning the presentation of claims and grievances.

10. One of the Board's answers to which I have referred

was to a question submitted by this carrier as a result of certain individual claims for which recovery was sought in the motion by the BLF&E for supplemental relief against this carrier. See pp. 123-127 of the first Byron affidavit and pp. 64-65 of my previous affidavit. Southern Pacific Question No. 7 and the Board's answer thereto, dated May 6, 1965, are as follows:

Southern Pacific Question No. 7:

In its answer to B.L.F.&E. Question No. 32, the Board stated that:

[6] "It was not the intent of the Award that the removal of firemen-helpers from yard engines should be followed by the substitution of other yard service employees in the cab to perform signal-passing and lookout functions formerly performed exclusively by firemen-helpers. If, however, other yard service employees formerly shared signal-passing and lookout functions in the cab with firemen-helpers, they may now continue to perform such functions."

A dispute has arisen between a carrier and an organization as to whether "other yard service employees formerly shared signal-passing and lookout functions in the cab with firemen-helpers." What procedure does the Award contemplate will be followed in resolving this factual issue?

Answer:

The Award does not establish any procedure for resolving this factual issue. The parties are referred to their respective rights under local agreements and the Railway Labor Act.

The motion by the BLF&E for supplemental relief against this carrier, insofar as it related to claims based upon the matter involved in Southern Pacific Question No. 7, was dismissed without prejudice by the Court in its order of September 13, 1965, pursuant to the parties' stipulation

dated March 31, 1965, in which such claims were withdrawn without prejudice. The BLF&E has now presented to the carrier, in the manner prescribed by the Time Limit on Claims Rule, a total of 88 claims, based upon the matter involved in Southern Pacific Question No. 7, which have been appealed to, and have been disallowed by, the carrier's Manager of Personnel. The BLF&E has not, however, instituted proceedings with respect to those claims either before the National Railroad Adjustment Board or before the special board of adjustment established on the property by agreement of the parties, as described in paragraph 6(ix) on page 4 of my previous affidavit and in paragraph 2 of Part I of the parties' stipulation of March 31, 1965.

11. Another of the Board's answers to which I have referred was to a question submitted by the BLF&E with respect to a matter as to which recovery on behalf of individual firemen also was sought in the motion by the BLF&E for supplemental relief against this carrier. See pp. 118-123 of the first Byron affidavit and pp. 60-63 of my previous affidavit. BLF&E Question No. 139 and the Board's answer thereto, dated September 16, 1965, are as follows:

[7] *B.L.F.&E. Question No. 139:*

Southern Pacific Company (T&L Lines) has conceded that the proper application of Award 282 requires the employment of a helper-fireman on a road locomotive used in yard service and not equipped with a deadman control in good operating condition.

It is the employees' contention that in deadheading extra helpers' firemen to outlying points to fill such vacancies the carrier is required to comply with schedule rules calling for allowance of deadhead mileage and payment of related compensation. Is such contention correct?

Answer:

The answer to this specific question is "yes". Pending claims for deadheading pay should be disposed

of upon the basis of the pertinent collective agreement rules and this interpretation thereof.

The motion by the BLF&E for supplemental relief against this carrier was also dismissed without prejudice by the Court in its order of September 13, 1965, insofar as it related to claims based upon the matter involved in BLF&E Question No. 139. The disposition of such claims, which include untimely claims about which complaint is made in paragraphs 2-15 of the second Byron affidavit, is described in paragraphs 13-22 below.

12. The BLE, to which a number of the carrier's firemen belong, and which, like the BLF&E, also was a party to the national agreement of August 11, 1948, has presented and prosecuted claims and grievances based on alleged violations of the Award and otherwise involving the Award, on behalf of its firemen members, in the manner prescribed by the Time Limit on Claims Rule. See paragraphs 8, 12(a) and 23(b) on pp. 6, 11 and 48 of my previous affidavit, and the E series of Exhibits thereto. Thus, the BLE recognizes the applicability of the parties' claim and grievance procedure to such claims and grievances. And, in the past the BLF&E itself expressly recognized the applicability of the Time Limit on Claims Rule to such claims and grievances, in a letter dated May 20, 1964, from J. R. Lewis, Acting General Chairman, BLF&E, to L. C. Albert (now deceased), the carrier's Manager of Personnel, a copy of which is attached hereto as Exhibit I. Moreover, the BLF&E has presented and prosecuted many claims and grievances based on alleged violations of the Award, or otherwise involving the [8] Award, including at least 55 claims and grievances concerning the specific matters mentioned in the second Byron affidavit (see paragraphs 14, 19 and 25, below), in the manner and within the time prescribed by the Time Limit on Claims Rule.

D. Paragraphs 2-11 of the Second Byron Affidavit

13. The claims mentioned in paragraphs 2-11 of the second Byron affidavit concern the operation of road locomotives not equipped with deadman controls, used on trains

which the carrier operates from Ennis through Dallas and Sherman to Dennison, Texas. For a time, yard crews that did not include firemen occasionally "borrowed" such road locomotives from the road crews to which the locomotives were assigned, to perform particular switching movements at the Dallas and Sherman yards, under circumstances referred to in paragraph 4 of the second Byron affidavit and described in greater detail on pages 60-63 of my previous affidavit. Such use of road locomotives is permissible under the Award by Arbitration Board No. 282. Board 282, in its answer dated October 23, 1964, to BLF&E Question No. 61, held explicitly that the deadman control requirement of Section II-B(5) of the Award does not apply to road locomotives used in yard or industrial switching:

[See p. 14, *supra*.]

* * * * *

14. However, the BLF&E presented several claims to the carrier, on behalf of individual firemen, based on such use of road locomotives, which claims it prosecuted in the manner prescribed by the Time Limit on Claims Rule. Further, the BLF&E objected to such use of road locomotives in its first motion for supplemental relief against the carrier. See pp. 118-121 of the first Byron [9] affidavit. Accordingly, to dispose of the matter without further contention, the carrier instructed its officials not to permit yard crews to use road locomotives in the manner in question and subsequently paid the claims that had been made and prosecuted in the fashion prescribed by the Time Limit on Claims Rule. See Exhibits D, E, F and J hereto. Among the claims thus made and paid were the following:

Fireman-Claimant	Date of Event on Which Claim Was Based
H. B. Baskin	August 20, 27, 1964
V. R. Blakley	July 27, August 3, 1964
A. M. Blount	June 30, July 9, August 8, 1964
L. Cooksey	June 25, 1964
R. R. Costlow	March 6, 7, 20, April 3, 25, 30, 1965
A. R. Goodman	March 16, 1965
L. J. Johnson	March 5, 1965
A. L. Lewis	April 11, June 16, 22, 27, 1965
F. Loughmiller	September 5, October 12, 1964; April 16, 1965
E. W. Mangan	July 7, 1964
L. McDonald	May 21, 1965
H. S. Mounts	July 2, 1964; January 8, 1965
F. A. Newton	January 17, 1965
W. N. Reed	August 15, November 22, December 20, 22, 1964; March 19, 21, April 4, 22, 24, 1965
H. L. Roberts	June 23, 1964
W. M. Wright	July 21, 1964

15. On the other hand, with six exceptions, the specific claims listed in paragraph 9 of the second Byron affidavit, unlike the timely claims referred to in paragraph 14 above, were first presented to the carrier well after 60 days after the alleged events on which they were based:

Fireman	Date for Which Claim Made	Date on Which Claim First Presented
L. H. Whiteacre	September 19, 1964	May 7, 1965
	October 16, 1964	May 9, 1965
	December 11, 1964	May 4, 1965
	December 24, 1964	May 4, 1965
	December 26, 1964	May 4, 1965
	January 2, 1965	May 4, 1965
W. L. Wells	December 31, 1964	May 4, 1965
	January 1, 1965	May 4, 1965
A. L. Lewis	January 6, 1965	May 4, 1965
	January 11, 1965	Never asserted prior to listing in second Byron affidavit
	January 13, 1965	May 6, 1965
	January 29, 1965	May 4, 1965

Fireman	Date for Which Claim Made	Date on Which Claim First Presented
[10] E. W. Mangan	January 7, 1965	May 6, 1965
R. R. Costlow	July 25, 1964	May 7, 1965
R. J. Ventrea	July 26, 1964	May 7, 1965
A. M. Blount	November 8, 1964	May 9, 1965
V. R. Blakley	December 23, 1964	May 4, 1965
	January 9, 1965	May 6, 1965
	January 11, 1965	May 6, 1965
	January 23, 1965	May 4, 1965
W. N. Reed	January 12, 1965	May 6, 1965
	January 26, 1965	May 4, 1965

And, the six other claims listed in paragraph 9 of the second Byron affidavit—those for W. N. Reed for November 22, 1964, March 19 and 21, 1965, and April 4, 22 and 24, 1965—were not appealed by Reed or by his local chairman, as required by paragraph (b) of the Time Limit on Claims Rule, within sixty days from notice of disallowance by the carrier. Accordingly, the carrier has declined to pay the claims listed in paragraph 9 of the second Byron affidavit on the ground that they are barred by the time limitations in the Time Limit on Claims Rule.¹ However, when the carrier agreed to pay timely claims mentioned in paragraph 14 above, the carrier and the BLF&E also agreed to hold the untimely claims in abeyance, to be disposed of on the basis of the answer by Board 282 to a question as to the application of contractual time limitations, to be submitted to the Board by the BLF&E. See Exhibits D, E and F hereto.

16. Most of the claims referred to in paragraphs 14 and 15 above included both “yard-day” claims and claims for “deadhead mileage.” That is, in addition to the pay that would have been earned by the claimant as a member of the yard crew that operated the locomotive on the occasion with which the claim was concerned (the “yard-day” claim), the claims also sought compensation for travel which was not

¹ The carrier has not previously declined to pay the claim for A. L. Lewis for January 11, 1965, because that claim was first asserted when it was included in the second Byron affidavit. However, that claim, too, is barred by the Time Limit on Claims Rule.

performed, to and from the job (the claim for "deadhead mileage").² When the parties entered into the agreements pursuant to which the [11] carrier paid timely claims and pursuant to which untimely claims were to be held in abeyance, they also agreed that the claims for deadhead mileage, included in the timely claims, would be disposed of pursuant to the Board's answer to BLF&E Question No. 139 which was then pending before the Arbitration Board. Further, they agreed that if the answer to the time-limit question to be submitted to the Board by the BLF&E were favorable to the BLF&E, claims for deadhead mileage included in the untimely claims likewise would be disposed of pursuant to the Board's answer to BLF&E Question No. 139. See Exhibits D, E, F and K hereto. Accordingly, following the Board's answer to BLF&E Question No. 139, quoted in paragraph 11 above, the carrier paid claims for deadhead mileage included in the timely claims listed in paragraph 4 above.

17. The carrier has records from which it can determine to which crews its locomotives have been assigned. However, it has no records from which it can determine whether a particular road locomotive has been "borrowed" by a yard crew for a particular movement, on a particular day, in the manner here in question. Accordingly, the true facts concerning claims based on such use of a road locomotive can be verified by the carrier only if carrier representatives can be found who happen to remember the facts, and cannot be verified at all after the lapse of any significant period of time.

E. Paragraphs 12-15 of the Second Byron Affidavit

18. The Barfield claims mentioned in paragraphs 12-15 of the second Byron affidavit concern the operation of locomotives at Shreveport, Louisiana. On June 23, 24 and 25, 1964, as stated in paragraph 34(a) on page 61 of my previous affidavit, road locomotives not equipped with deadman controls were used by crews that did not include firemen to perform a particular yard transfer movement at Shreve-

² The agreements between the carrier and the BLF&E provide that "firemen deadheading at the instance of the Company" shall be paid therefor.

port, Louisiana. In view of the answer by Board No. 282 to BLF&E Question No. 61, quoted in paragraph 13 above, such use of road locomotives was permissible under the Award.

19. However, fireman C. M. Luce immediately presented claims to the carrier, on his own behalf, based on the use of the locomotives on June 24 and 25, 1964, which claims were prosecuted in the manner prescribed by the parties' [12] claim and grievance procedure. Further, the BLF&E complained of the matter in its first motion for supplemental relief against the carrier. See pp. 121-123 of the first Byron affidavit. Accordingly, to dispose of the matter without further contention the carrier instructed its officials not to permit a recurrence, and subsequently paid the claims for June 24 and June 25, 1964, made by fireman Luce.

20. On October 20, 1964, when the Luce claims were appealed to the carrier's Manager of Personnel by Mr. Byron, Mr. Byron added to them additional claims in favor of unnamed firemen based on similar alleged events which Mr. Byron claimed had occurred on June 17, 19 and 23, 1964—the claims now asserted on behalf of C. M. Barfield in paragraph 14 of the second Byron affidavit. Because those new claims were based on events that had occurred more than 60 days before the claims were presented, and because the claims were not presented in the manner prescribed by the parties' grievance procedure, the carrier has declined to pay those claims on the ground that they are barred by the provisions of the Time Limit on Claims Rule. Nevertheless, when the carrier agreed to pay the timely claims made by fireman Luce, the carrier and the BLF&E also agreed to hold the untimely claims in abeyance, to be disposed of on the basis of the answer by Board 282 to a question as to the applicability of the contractual time limitation, to be submitted to the Board by the BLF&E. See Exhibit G hereto.

21. Like the claims described in paragraph 16 above, each of the Luce and Barfield claims sought payment of a "yard-day" and also "deadhead mileage." Accordingly, the parties agreed to a disposition of the portions of the Luce and Barfield claims which concerned deadhead mileage like that described in paragraph 16 above. See Exhibit G hereto. Consequently, following the answer by the Arbitration

Board to BLF&E Question No. 139, quoted in paragraph 11 above, the carrier paid the deadhead mileage claimed for fireman Luce.

22. Paragraphs 12-15 of the second Byron affidavit (which concern the Luce and Barfield claims) purport to be concerned with the use of locomotives "in switching service without the deadman control being in operating condition." [13] (Paragraph 14.) Claims so characterized could involve either (1) a locomotive not equipped with a deadman control at all, or (2) a locomotive equipped with a defective deadman control. With respect to the nature of the carrier's records as concerns claims of the first variety, see paragraph 17 above. With respect to claims of the second variety, the carrier can determine from its records when a defective deadman control was first reported to maintenance personnel, but it maintains no records from which it can determine when a defective deadman control first became defective. Accordingly, the true facts concerning claims of the sort with which paragraphs 12-15 of the second Byron affidavit purportedly are concerned usually can be verified by the carrier only if carrier representatives can be found who happen to remember the facts, and ordinarily cannot be verified at all after the lapse of any significant period of time.

F. Paragraphs 16-23 of the Second Byron Affidavit

23. Pursuant to a 1945 agreement between predecessors in interest of the Southern Pacific, Texas and Louisiana Lines, and the Missouri Pacific Railroad, the Southern Pacific and the Missouri Pacific operate a train known as Orange Switcher No. 2 during alternating two-month periods. The Southern Pacific operates the Switcher in April and May, August and September, and December and January. Since the Award, the Southern Pacific has operated the Switcher, during the months when the Southern Pacific was responsible for its operation, with crews to which firemen have not been assigned.

24. When "blankable" firemen's assignments were initially designated by the carrier in March 1954 pursuant to Section II-B(1) of Award 282, and when newly established firemen's assignments were listed in June 1964 at the ex-

piration of the first three-month interim period specified in Section II-B(3) of the Award, Orange Switcher No. 2 was not being operated by the Southern Pacific and thus could not be listed by that carrier. When newly established firemen's assignments were listed again on September 3, 1964, at the expiration of the second three-month interim period specified in Section II-B(3) of the Award, the Switcher was being operated by the Southern Pacific but through inadvertence was not included on the September list. When newly established assignments were listed again three months later, the carrier discovered its earlier error and [14] listed the Switcher. The assignment has never been "vetoed" by the BLF&E. Thus, operation of the Switcher by crews to which firemen have not been assigned has been permissible under the Award, except for the period from September 3, 1964, when the carrier inadvertently failed to include the assignment on the September listing, to September 30, 1964, when operation of the Switcher reverted to the Missouri Pacific.

25. The BLF&E presented a number of claims on behalf of individual firemen based on the operation of the Switcher by crews that did not include firemen during the period from September 3 to September 30, 1964, and at other times. On May 3, 1965, the carrier agreed to pay claims for the period from September 3 to September 30, 1964, which had been presented and appealed in the manner prescribed by the parties' grievance procedure, and the BLF&E withdrew claims, conceded to be invalid, based on the operation of the Switcher at other times. See Exhibit J hereto. Claims paid pursuant to that agreement are as follows:³

Fireman-Claimant	Date on Which Claim was Based
E. R. Castilaw	September 3, 9, 1964
H. J. Huval	September 4, 6, 10, 1964
E. R. Staha	September 21, 1964
N. Stockton	September 13, 16, 23, 24, 29, 30, 1964
O. Stockton	September 8, 11, 22, 1964

³ Initially, the carrier declined to pay the Huval and Staha claims, listed above, on the ground that the claims had not been appealed in the manner prescribed by the parties' grievance procedure. However, a further check of the carrier's records revealed that the carrier's contention in that regard was mistaken. Accordingly, the Huval and Staha claims were paid by the carrier in December 1965.

26. On May 10, 1965, almost immediately after the parties' agreement of May 3, 1965, Mr. Byron asserted additional claims based on the operation of the Switcher during the period from September 3 to September 30, 1964—the claims listed in paragraph 22 of the second Byron affidavit. With the exception of the Huval and Staha claims (see footnote 3, *supra*), those claims had not been appealed to the carrier's Manager of Personnel within the time for such appeals [15] prescribed by the parties' claim and grievance procedure.⁴ Accordingly, the carrier has declined to pay those claims on the ground that they are barred by the provisions of the Time Limit on Claims Rule, and the carrier and the BLF&E have agreed that they will be held in abeyance, to be disposed of pursuant to the answer by Board 282 to a question as to the applicability of the contractual time limitations, to be submitted to the Board by the BLF&E. See Exhibit II hereto.

G. Specific Allegations in Second Byron Affidavit

27. The carrier takes issue with statements in the second Byron affidavit to the extent such statements are inconsistent with paragraphs 13 through 26 above. In addition, the carrier takes issue with specific statements in the second Byron affidavit as follows:

(a) With reference to paragraph 2 of the second Byron affidavit: Freight trains that operate from Ennis to Dennison through Dallas and Sherman, Texas, do not exceed 8973 feet in length, and ordinarily are much shorter.

(b) With reference to paragraph 4 of the second Byron affidavit: The use of road locomotives in the manner and for the purposes described in paragraph 4 of the second Byron affidavit has been discontinued and was not knowingly permitted by the carrier's officers.

(c) With reference to paragraph 6 of the second Byron affidavit: For reasons stated in paragraph 13 above, the carrier denies that Fireman Loughmiller should have been

⁴ Moreover, the only claim ever theretofore presented to the carrier on behalf of I. C. Dean for September 15, 1964, concerned not Orange Switcher No. 2 but an entirely different train, the Port Arthur local.

assigned to the crew mentioned in paragraph 6 of the second Byron affidavit.

(d) With reference to paragraph 12 of the second Byron affidavit: The carrier has not knowingly permitted the operation of "yard locomotives in yard switching service without a fireman (helper) being a member of the crew, while the deadman control with which such locomotives are required to be equipped was not in operating condition." See pages 18-23 of my previous affidavit.

(e) With reference to paragraph 19 of the second Byron affidavit: [16] The letter dated December 11, 1964, from L. C. Albert to A. C. Byron and attached to the second Byron affidavit as Exhibit E thereto is not characterized fairly in paragraph 19 of the second Byron affidavit. The letter speaks for itself.

(f) With reference to paragraph 23 of the second Byron affidavit: The Huval and Staha claims listed in paragraph 22 of the second Byron affidavit were paid by the carrier in December 1965.

s/ E. S. LOHRKE.

COUNTY OF HARRIS,

State of Texas, ss:

Subscribed and sworn to before me this 3rd day of January, 1966.

s/ W. KING HALL,
Notary Public.

My Commission Expires: 6-1-1967.

EXHIBIT A

New York, N. Y.
June 19, 1949

MEMORANDUM AGREEMENT

In connection with the understanding reached between the Carriers' Conference Committees and representatives of the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen and the Switchmen's Union of North America, dated June 3, 1949, at Chicago, Ill., creating a Joint Committee to hear and determine controversies and disputes growing out of the National Rules Agreement of August 11, 1948; the understanding of June 3rd reading:

"Any dispute or controversy arising on any carrier as to interpretation or application of any of the terms of the Rules Agreement, dated at Washington, D. C., August 11, 1948, and not settled on such carrier, shall be referred jointly, or by either party, for decision to a committee, the carrier members of which shall be three members of the Carriers' Conference Committee signatories thereto, or their successors, and the employee members of which shall be one representative selected by each of the three organizations signatories thereto, or their representatives, or successors. Decisions of such Committee shall be final and binding."

The said understanding of June 3rd has been ratified and is hereby adopted by the employees represented by the organizations specified above and the carriers listed in Appendix A.

It is agreed that this Joint Committee, when established, will be a tribunal within the meaning of paragraph (c) of Section 17 of such agreement. In cases where the Joint Committee is deadlocked and no other disposition of the case is agreed upon by the Joint Committee then the parties shall have six months from the date of such deadlock to progress the case to a tribunal having jurisdiction pursuant to law or agreement.

It is not intended that this Joint Committee will be swamped with disputes but where there are a number of disputes on the same carrier involving similar facts and the same principle, the carrier and organization involved may agree to submit one such dispute to the Joint Committee, making a standby agreement to the effect that other specified cases will be settled on the basis of the decision reached by the Joint Committee in dispute submitted to it.

The following procedure is agreed to in submitting disputes to the Joint Committee:

1. The Joint Committee shall consider disputes submitted:
 - (a) Jointly by the president(s) of the organization(s) or his or their representative(s) designated to handle such matters for the organization(s) and the officer(s) designated to handle such matters for carrier(s).
 - (b) On behalf of the employe(s), by the president(s) of the organization(s) or his or their representative(s) designated to handle such matters for the organization(s).
 - (c) On behalf of the carrier(s), by the officer(s) designated to handle such matters for the carrier(s).
2. The party or parties, as specified in Item 1 hereof, invoking the services of the Joint Committee shall file a complete submission presenting—
 - (A) In the case of joint submissions:
 - (1) The question at issue.
 - (2) Joint Statement of Facts.
 - (3) Position of employe(s) with such substantiating evidence and argument as it is desired to file with the joint committee.
 - (4) Position of the carrier(s) with such substantiating evidence and argument as it is desired to file with the joint committee.
 - (5) Twenty (20) copies of each joint submission shall be sent to and addressed as follows:

If involving Eastern
Railroads:

Mr. H. E. Jones,
Chairman, Executive
Committee, Bureau of

- Information of the
Eastern Railways,
5710 Grand Central
Terml. Bldg., New York
17, N. Y.
- If involving Western
Railroads: Mr. Raymond F. Welsh,
Executive Secretary,
Association of Western
Railways,
Room 482, Union Station
Building, Chicago 6, Ill.
- If involving South-
eastern Railroads: Mr. A. J. Bier, Manager,
Bureau of Information
of the Southeastern Rys.
Room 706 Investment
Building, Washington 5,
D. C.
- (6) Twenty (20) copies of each joint submission
also shall be sent to and addressed as follows:
- If involving the Broth-
erhood of Locomo-
tive Engineers: Mr. A. Johnston,
Grand Chief Engineer,
Brotherhood of Loco-
motive Engineers,
1118 B. of L. E. Bldg.,
Cleveland 14, Ohio
- If involving the
Brotherhood of Loco-
motive Firemen and
Enginemen: Mr. D. B. Robertson,
International President,
Brotherhood of Loco-
motive Firemen and
Enginemen,
318 Keith Bldg.,
Cleveland 15, Ohio
- If involving the Switch-
men's Union of North
America: Mr. A. J. Glover,
President,
Switchmen's Union of
North America,
3 Linwood Avenue,
Buffalo 2, N. Y.

(B) If a joint submission is not agreed upon, then disputes may be submitted to the joint committee ex parte, which shall include:

- (1) The question at issue.
- (2) Ex parte Statement of Facts.
- (3) Position of employe(s) or carrier(s), as case may be, with such substantiating evidence or argument as it is desired to file with the joint committee.
- (4) In the case of exparte submissions originating with the organization(s), the chief executive officer of the organization(s) involved, as named in paragraph 2 (A) (6), will send twenty (20) copies each of such submissions to the proper officer of the carriers' organizations, as named in paragraph 2 (A) (5). Such officer will send copy of the organization's ex parte submission to the management of the railroad involved.
- (5) In the case of ex parte submissions originating with the carrier(s), the management of the carrier involved will send forty (40) copies each of such submissions to the proper officer of the carriers' organizations, as named in paragraph 2 (A) (5). Such officer will send twenty (20) copies each of such submissions to the chief executive officer of the organization involved, as named in paragraph 2 (A) (6).
- (6) In the case of ex parte submissions originating with the organizations, the management of the carrier involved will prepare its answering submissions in accordance with paragraph 2 (B) (1), 2(B) (2) and 2(B) (3) hereof, and will send forty (40) copies each of such answering submissions to the proper officer of the carriers' organizations, as named in paragraph 2(A) (5). Such officer will send twenty (20) copies each of such answering submissions to the chief executive officer of the organization involved, as named in paragraph 2(A) (6).

- (7) In the case of ex parte submissions originating with the carriers, the organization involved will prepare its answering submissions in accordance with paragraphs 2(B) (1), 2(B) (2) and 2(B) (3) hereof, and the chief executive officer of the organization involved, as named in paragraph 2(A) (6) will send twenty (20) copies each of such answering submissions to the proper officer of the carriers' organizations, as named in paragraph 2(A) (5).
- (C) Upon receipt of copies of the complete submission(s) from both parties, the following distribution will immediately be made:
- One (1) copy to each carrier member of the committee by the proper officer of the carriers' organizations.
- One (1) copy to each organization member of the committee by the chief executive officer of the organization involved.
- (D) Following receipt of complete submission(s) from both parties, the case (s) will be considered ready for docketing for consideration by the joint committee.
- (E) Opportunity, if requested, will be given either party to a dispute to appear before the joint committee.

[Signatures]

* * * * *

EXHIBIT B

January 19, 1950.

Mr. T. S. McFarland
Secretary, First Division
National Railroad Adjustment Board
39 South La Salle Street
Chicago 3, Illinois

Dear Sir:

Enclosed herewith please find copy of a memorandum agreement entered into June 29, 1949, between the representatives of the railroads and the BLE, BLF&E, and SUNA, parties to the National Rules Agreement of August 11, 1948, which provides for the establishment of a joint committee to pass on disputes involving the application of any of the provisions of such National Agreement.

It will be noted that this agreement contains the following provision:

"It is agreed that this joint Committee, when established, will be a tribunal within the meaning of paragraph (c) of Section 17 of such agreement. In cases where the Joint Committee is deadlocked and no other disposition of the case is agreed upon by the Joint Committee then the parties shall have six months from the date of such deadlock to progress the case to a tribunal having jurisdiction pursuant to law or agreement."

If it develops that the application of any of the provisions of the National Rules Agreement of August 11, 1948, is a question at issue in connection with any dispute which has been or is in future referred to the First Division of the National Railroad Adjustment Board for consideration, we respectfully request that the First Division refrain from rendering an award in connection with such dispute and hold same in abeyance until the issue involving the application of the National Rules Agreement has been disposed of by the Joint Committee under the provisions of the Memorandum Agreement of June 29, 1949.

Will you please advise if an understanding to this effect is agreeable to the First Division, National Railroad Adjustment Board.

Very truly yours,

A. JOHNSTON, <i>Grand Chief Engineer, BLE.</i>	D. B. ROBERTSON, <i>President, BLF&E.</i>
	A. J. GLOVER, <i>President, SUNA.</i>

EXHIBIT C

NATIONAL RAILROAD ADJUSTMENT BOARD
First Division

MOVED:

Be it resolved that it is the sense of this Division with respect to the request of the Chief Executives of the Engineers, Firemen, and Switchmen, contained in their letter of January 19, 1950, is agreeable to the Division, and that in any case in which the application of the provisions of the National Rules Agreement of August 11, 1948, is a question at issue, such case, or cases, will be held in abeyance until the issue involving the application of the National Rules Agreement has been disposed of by the Joint Committee under the provisions of the Agreement of June 29, 1949.

And be it further moved that the Executive Secretary be instructed to address the following letter to Messrs. Shields, Robertson and Glover:

“Gentlemen:

This communication has reference to your letter of January 19, 1950, addressed to the Executive Secretary of the First Division, with which you enclosed a copy of a Memorandum Agreement entered into June 29, 1949, between representatives of the railroads and the B.L.E., B.L.F.&E., and S.U.N.A., parties to the National Rules Agreement of August 11, 1948.

“In that letter you drew our attention to the provisions of the Agreement of June 29, 1949, and requested that the First Division refrain from rendering an award in connection with disputes of the nature described holding in abeyance any such cases as might be submitted to it ‘until the issue involving the application of the National Rules Agreement has been disposed of by the Joint Committee * * *.’

“Your suggestion that the Division refrain from acting on any such cases submitted to it involving ‘the interpretation or application of any of the terms of

the Rules Agreement * * * of August 11, 1948 * * * is entirely agreeable to the First Division. Such case, or cases, will be held in abeyance until the issue involving the application of the National Rules Agreement has been disposed of by the Joint Committee under the provisions of the Agreement of June 29, 1949.

“By order of the First Division, National Railroad Adjustment Board.

Very truly yours,

J. M. MacLEOD,
Executive Secretary”.

Adopted July 1st, 1952.

EXHIBIT D

SOUTHERN PACIFIC COMPANY—TEXAS AND LOUISIANA LINES
Houston, Texas

August 27, 1965.

Claim of firemen for deadhead mileage, Ennis to Miller and return, in addition to earnings on 3:59 PM Yard Assignment No. 205, alleging engineer on this assignment operated diesel road locomotives in switching operation without units being equipped with deadman control: Fireman L. H. Whitacre, December 11, 24, 26, 1964; January 2, 1965; Fireman W. L. Wells, December 31, 1964, January 1, 1965; Fireman A. L. Lewis, January 6, 13, 1965; Fireman E. W. Mangan, January 7, 1965; Fireman A. R. Goodman, March 16, 1965; Fireman F. Loughmiller, April 16, 1965; Fireman R. R. Costlow, March 6, 7, 20, April 3, 25, 30, 1965; Fireman L. J. Johnson, March 5, 1965; and Fireman A. L. Lewis on Yard Assignment No. 302, Miller, May 12, 1965:

Claim of firemen for deadhead mileage, Ennis to Hearne and return, alleging 7:00 AM yard assignment was operated without being properly equipped with deadman control: Fireman L. H. Whitacre, September 19, October 16, 1964; Fireman R. R. Costlow, July 25, 1964; Fireman R. J. Ventrea, July 26, 1964; and Fireman A. M. Blount, November 8, 1964:

Claim of Fireman L. McDonald for deadhead mileage, Ennis to Corsicana, one yard day 7:00 AM yard assignment, Corpus Christi, and deadhead mileage, Corsicana to Ennis, May 21, 1965:

Mr. A. C. Byron
General Chairman, BLF&E
617 Bettles Building
Houston, Texas 77002

Dear Sir:

The above subject was discussed in conference today.

It is agreed that the claim for one yard day for fireman set out below will be allowed:

A. R. Goodman—March 16, 1965—Miller
F. Loughmiller—April 16, 1965—Miller
R. R. Costlow—March 6, 7, 20, April 3, 25, 30, 1965—
Miller
L. J. Johnson—March 5, 1965—Miller
A. L. Lewis—May 12, 1965—Miller
L. McDonald—May 21, 1965—Corsicana

The claims for deadhead mileage, as captioned above, for these individual firemen will be disposed of on the basis of answer given to Question #139 now pending before members of Arbitration Board 282.

There is a dispute on time limit involving claims presented by the following named firemen:

L. H. Whitacre—December 11, 24, 26, 1964, January 2, 1965
W. L. Wells—December 31, 1964, January 1, 1965
A. L. Lewis—January 6, 13, 1965
E. W. Mangan—January 7, 1965
R. R. Costlow—July 25, 1964
R. J. Ventrco—July 26, 1964
L. H. Whitacre—September 19, October 16, 1964
A. M. Blount—November 8, 1964

and it is agreed that these claims will be held in abeyance to be disposed of on the basis of answer given to time-limit question now being presented by the BLF&E to members of Arbitration Board 282. In event the answer should be

favorable to the BLF&E, the claim for deadhead mileage will then be disposed of on the basis of answer to Question #139 now pending before members of Arbitration Board 282.

Yours truly,

J. D. DAVIS,
Manager of Personnel.

ACCEPTED:

A. C. BYRON,
General Chairman, BLF&E.

EXHIBIT E

SOUTHERN PACIFIC COMPANY
Texas and Louisiana Lines
Houston, Texas

August 27, 1965.

Claim of Fireman V. R. Blakley for an arbitrary and penalty 100 miles deadhead, Ennis to Miller; earnings fireman would have made on each date December 23, 1964, January 9, 11, 23, 1965; and 100 miles deadhead, Miller to Ennis, alleging Engineer Jarnigan used units on Train 259 in yard service and such were not equipped with deadman controls:

Mr. A. C. Byron
General Chairman, BLF&E
617 Bettes Building
Houston, Texas 77002

Dear Sir:

The above subject was discussed in conference today.

It is the carrier's position that claim dates, as set out in caption above, were presented by the Local Chairman in excess of the time-limit provisions as provided for in the Firemen's Agreement, H&TC Lines.

It was agreed this case will be disposed of on the basis of answer to time-limit question now being presented by the BLF&E to members of Arbitration Board 282.

The claim for deadhead, as set out above, will be disposed of on the basis of answer to Question #139 now pending before members of Arbitration Board 282.

Yours truly,

J. D. DAVIS,
Manager of Personnel.

ACCEPTED:

A. C. BYRON,
General Chairman, BLF&E.

EXHIBIT F

SOUTHERN PACIFIC COMPANY—TEXAS AND LOUISIANA LINES
Houston, Texas

August 26, 1965.

Claim of firemen for 100 miles at deadhead rate, Ennis to Miller; one yard day, Yard Assignment 205; and 100 miles at deadhead rate, Miller to Ennis, alleging yard engine was operated without functioning deadman control in yard switching as follows: Fireman A. L. Lewis, January 29, April 11, 1965, and Fireman W. N. Reed, November 22, 1964, January 12, 26, March 19, 21, April 4, 22, 24, 1965:

Mr. A. C. Byron
General Chairman, BLF&E
617 Bettes Building
Houston, Texas 77002

Dear Sir:

The above subject, listed as Case No. 36 in your docket of June 16, 1965, was discussed in conference today.

It was agreed that the claim of Fireman A. L. Lewis for April 11, 1965, and W. N. Reed for November 22, 1964, March 19, 21, April 4, 22, and 24, 1965, Miller, would be allowed.

The claims presented by Fireman A. L. Lewis for January 29 and W. N. Reed for January 12 and 26, 1965, were presented some five months after the alleged infraction, and question of time limitation foreclosing the claims has arisen. The BLF&E Organization is presenting to members of Arbitration Board 282 a question on time limitation and its application under Award 282. It is agreed that these claims will be held in abeyance to be disposed of on the basis of the answer given to the question regarding time limitation.

That portion of the claim for 100 miles at deadhead rate,

Ennis to Miller and return, on the dates set out above will be disposed of on the basis of answer given to Question #139 now pending before the members of Arbitration Board 282.

Yours truly,

J. D. DAVIS,
Manager of Personnel.

ACCEPTED:

A. C. BYRON,
General Chairman, BLF&E.

EXHIBIT G

SOUTHERN PACIFIC COMPANY—TEXAS AND LOUISIANA LINES

Houston, Texas

August 30, 1965.

Protest of General Chairman A. C. Byron, BLF&E, alleging Carrier operated diesel yard engines, Shreveport, without use of fireman when diesels were allegedly not equipped with deadman control in operating condition on June 17, 19, 23, 24, 25, 1964, and claim for deadhead mileage Lufkin to Shreveport and return, and earnings which would accrue to such yard assignments at Shreveport for the first-out available extra man at Lufkin who would have stood to deadhead Lufkin to Shreveport on 9:59 AM bus June 17, 19, and 23, 1964, and if no extra fireman at Lufkin available, claim is made for the available yard fireman at Shreveport.

Mr. A. C. Byron
General Chairman, BLF&E
617 Bettes Building
Houston, Texas 77002

Dear Sir:

The above subject was discussed in conference July 16, 1965, and again today.

It is a part of Carrier's letter of May 3, 1965, as set out on page 2 of that communication. The Carrier advised they were agreeable to paying claim dates of June 24 and 25, 1964 to Fireman C. M. Luce when 3:00 P.M. yard assignment at Shreveport performed service with yard engine which was not properly equipped with an operative deadman control.

The Carrier's records reflect that Unit 177 was operated the entire 3:00 P.M.-11:00 P.M. shift on June 22, 1964, and was equipped with deadman control in good operating condition. In view of this fact, it was agreed that claim for this date would be withdrawn.

The claim for deadhead pay of 117 miles on June 24 and

25, 1964, respectively, will be disposed of on the basis of answer given by members of Arbitration Board 282 to Question #139 now pending before that Board.

Claim dates of June 17, 19, and 23, 1964, for first-out extra Fireman C. H. Barfield, Lufkin, are in dispute due to allegedly not being presented within the provisions of the Time-Limit-On-Claims Rule as contained in the current Firemen's Agreement, HE&WT-H&S Lines. The BLF&E Organization is presenting to members of Arbitration Board 282 a question on time limitation and its application under Award 282. It is agreed that these claims will be held in abeyance to be disposed of on the basis of answer given to the question regarding time limitation. In event the answer is favorable to the BLF&E, that portion of the claim for deadheading from Lufkin to Shreveport and return on June 17, 19, and 23, 1964, will then be recognized and disposed of on the basis of answer given to Question #139, now pending before members of Arbitration Board 282.

Yours truly,

J. D. DAVIS,
Manager of Personnel.

ACCEPTED:

A. C. BYRON,
General Chairman, BLF&E.

EXHIBIT H

SOUTHERN PACIFIC COMPANY

Texas and Louisiana Lines
Houston, Texas

August 27, 1965.

Claim of firemen for earnings which would have accrued to a fireman on Orange Switcher No. 2, Run No. 891: Fireman H. J. Huval, September 4, 6, 10, 1964, and Fireman E. R. Staha, August 24 and September 21, 1964:

Claim of firemen for 100 miles and other allowances made on Orange Switcher No. 2, Run No. 891, when operated without a fireman: Fireman E. S. Coleman, September 5, 7, 14, 17, 18, 25, 26, 28, 1964; Fireman I. C. Dean, September 15, 1964; Fireman V. L. Alston, September 20, 27, 1964:

Mr. A. C. Byron
General Chairman, BLF&E
617 Bettles Building
Houston, Texas 77002

Dear Sir:

The above subjects, listed as Case No. 44 in your docket of June 16, 1965, were discussed in conference today.

It was agreed that this case would be held in abeyance to be disposed of on the basis of answer given to time-limit question now being presented by the BLF&E to members of Arbitration Board 282.

Yours truly,

J. D. DAVIS,
Manager of Personnel.

ACCEPTED:

A. C. BYRON,
General Chairman, BLF&E.

EXHIBIT I

GENERAL GRIEVANCE COMMITTEE
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

Southern Pacific Company, T and L lines
617 Bettes Building, 201 Main Street, Houston 2, Texas

A. C. Byron
General Chairman

May 20, 1964

Mr. L. C. Albert,
Manager of Personnel,
Southern Pacific Company,
Houston, Texas.

Dear Sir:

We are in receipt of an official copy of the interpretations rendered May 16 and 17, 1964 by Arbitration Board 282 on certain of the first set of disputed questions stemming from its initial award.

In studying these interpretations, we find misapplications by carrier on this property in placing this award in effect.

There is a time limitation involved in certain of the resolved questions, therefore we ask for a conference date as soon as possible to make corrections.

Truly yours,

J. R. LEWIS,
Acting General Chairman.

EXHIBIT J

SOUTHERN PACIFIC COMPANY
Texas and Louisiana Lines
Houston, Texas

May 3, 1965.

Mr. A. C. Byron
General Chairman, BLF&E
617 Bettes Building
Houston, Texas 77002

Dear Sir:

This will confirm our conferences beginning April 26, 1965, regarding items listed as Nos. 5, 7, 8, and 9, originally presented by the BLF&E in brief submitted to United States District Court, District of Columbia, docketed as Misc. No. 41-63.

In discussion of *Item 5*, you were advised we were agreeable to paying a yard day to the following named firemen on the dates set out opposite their name:

V. R. Blakley	—July 27, August 3, October 8, 1964, January 23, 1965
A. M. Blount	—June 30, July 9, August 8, 1964
H. Baskin	—August 20, 27, 1964
H. S. Mounts	—July 2, 1964, January 5, 8, 10, 18, 1965
H. L. Roberts	—June 23, 1964
W. N. Reed	—August 15, December 20, 22, 1964
H. B. Martin	—July 23, 1964
L. Cooksey	—June 25, 1964
J. B. Miller	—July 28, August 8, 1964
B. W. Splawn	—June 24, 1964
W. M. Wright	—July 21, 1964
E. W. Mangan	—July 7, 1964
F. Loughmiller	—September 5, October 12, 1964
B. V. Lowry	—January 19, 24, 1965
A. L. Lewis	—January 16, 22, 27, 1965
F. A. Newton	—January 17, 1965

You have also presented claims for deadhead service, which was not performed, for some of the above-named individuals. We were not agreeable to paying claims for deadheading which was not performed. We offered to take these claims to Special Board of Adjustment No. 88, BLF&E—SP-T&L, which is current on this property. You refused this offer. The deadhead claims were for the following firemen:

V. R. Blakley	—400 miles
H. S. Mounts	—800 miles
W. N. Reed	—600 miles
J. B. Miller	—224 miles
W. M. Wright	—200 miles
E. W. Mangan	—200 miles
F. Loughmiller	—400 miles
B. V. Lowry	—400 miles
A. L. Lewis	—600 miles
F. A. Newton	—200 miles

In addition, you requested that claims presented for unnamed first-out extra firemen at Lufkin on June 17, 19, 23, 24, 25, 1964, be paid, allowing them a yard day and deadhead mileage Lufkin to Shreveport, or if there were no first-out extra firemen, to pay a regularly assigned fireman at Shreveport a yard day on these five dates. You were informed that our records reflect Extra Fireman C. M. Luce presented claim for June 22, 24, and 25, 1964, for deadhead mileage Lufkin to Shreveport and a yard day on the 3:00 P.M. yard assignment. Time claims were filed by the individual fireman on dates cited above. After declination by the Superintendent, they were appealed by the Local BLF&E Committee by letter dated August 10, 1964; the Superintendent declined the claims September 14, 1964; the Local BLF&E Committee, by letter dated September 29, 1964, appealed the claims to your office. You, by letter dated October 20, 1964, instituted a new claim in behalf of unnamed extra firemen for yard day at Shreveport and deadhead mileage from Lufkin to Shreveport, June 17, 19, 23, 24, and 25, 1964. This office informed you, by letter dated December 18, 1964, that we would not consider blanket claims, but we would consider the claim of Fireman

C. M. Luce for June 22, 24, and 25, 1964. During our discussion in conference, we clearly proved that June 22, 1964, was not a valid claim and advised we were agreeable to paying a yard day for June 24 and 25, 1964. You indicated this claim would have to be paid as presented by you or you would not be willing to sign an agreement. We could not agree with this position and offered to take this claim to Special Board of Adjustment No. 88 for adjudication. You would not agree to this handling.

In regard to *Item 7*, we were in agreement that claim dates of firemen between the period September 3 through 30, 1964, inclusive, were valid; that all claims presented prior to September 3 and subsequent to September 30, 1964, were not valid and would be considered as withdrawn.

It was agreed that the following firemen would be allowed the earnings which would have accrued to a fireman on Orange Switcher No. 2 on the dates set out below:

E. L. Castilaw	—September 3, 9, 1964
O. Stockton	—September 8, 11, 22, 1964
N. Stockton	—September 13, 16, 23, 24, 29, 30, 1964

In discussion of *Item 8*, we were in agreement that the following named firemen would be allowed a fifty-mile run-around on the dates set out below:

L. H. Whitacre	—May 26, 1964
H. L. Roberts	—June 16, 21, July 31, August 3, 1964
L. R. Hobbs	—May 29, 1964
B. W. Splawn	—May 30, June 16, 1964
H. B. Baskin	—June 9, 20, December 18 (2), 1964
F. Loughmiller	—June 22, 1964
D. C. Colston	—June 23, 1964
H. B. Martin	—August 2, 1964

In addition, it was agreed claims which were presented subsequent to the presentation of the above-cited claims would also be disposed of by allowance of a fifty-mile run-around as follows:

S. H. Mounts	—December 21, 23, 1964
W. L. Wells	—December 21 (2), 22, 1964

You were advised that the first claim in behalf of Fireman H. L. Roberts of which we have knowledge and which has been properly handled under the Time-Limit-On-Claims Rule to this office was dated June 16, 1964. We were willing to pay claims subsequent to that date. In your brief you have listed dates of May 27 and May 28 (2), 1964, in behalf of Fireman H. L. Roberts but, as admitted by you, these claims were never progressed past the Superintendent and were allowed to die at that level. Accordingly, we were of the opinion they were barred under the Time-Limit-On-Claims Rule. During our discussion of this subject, you advised it was the position of the Brotherhood of Locomotive Firemen's Organization that any claims presented to the Carrier at any level, irrespective of the degree handled, and which are a violation of Award 282, would be valid. You advised this position was taken from your understanding of the court order setting up injunction against the BLF&E's striking the nation's carriers. You also advised this was the position of the president of your organization, Mr. H. E. Gilbert, in letter addressed to Mr. A. E. Perlman, President of the New York Central Railroad, in letter dated April 7, 1965. We were not shown the contents of this letter. We offered to take the three disputed dates of May 27 and May 28 (2), 1964, to Special Board of Adjustment No. 88 for adjudication. You advised you were not agreeable to such handling. You also advised if Award 282 was not in force, you would agree the claims would not be valid under the Time-Limit-On-Claims Rule.

We were in agreement that under *Item 9*, the following named firemen, who have previously been allowed one day at pro rata rate, should have been allowed one day at time and one-half rate:

D. R. Ballew	—Hearne—August 3, 1964
M. F. Bains-	—Avondale—October 3, 1964
father	
W. J. Adams	—Avondale—October 4, 1964
G. H. Stokes	—Avondale—October 10, 1964

During conference, you made reference to a subsequent claim in behalf of Fireman H. V. Morton, listed as Case No. 90 in BLF&E current docket of March 23, 1965, for one day at time and one-half rate applicable to an inside hostler, Houston Terminal, December 19, 1964, in lieu of a pro-rata day previously allowed. We stated we were agreeable to including this claim with the above-enumerated claims for disposiiton.

This is to advise you we are instructing the Superintendents of the respective divisions on which the claimants are employed to make the allowances set out above, and we will advise you as to the amounts and pay roll period in which they are made.

We again extend our offer to take the disputed items, as cited above, in joint submission, if you prefer, to Special Board of Adjustment No. 88 for adjudication.

Yours truly,

L. C. ALBERT

EXHIBIT K

SOUTHERN PACIFIC COMPANY

Texas and Louisiana Lines
Houston, Texas

October 18, 1965

Claim of Fireman A. M. Blount for an arbitrary penalty yard day, Sherman, in addition to earnings allowed on Train 257, Ennis to Denison, June 30, 1964, and again on July 9, 1964; Fireman L. Cooksey, June 25, 1964, alleging that yard engine assignment was operated without a fireman:

Claim of Fireman V. R. Blakley for an arbitrary yard day, Miller, July 27, 1964 and August 3, 1964, alleging yard engine was operated without a fireman and without a deadman control.

Claim of firemen for 100 miles at deadhead rate, Ennis to Sherman, one yard day at Sherman, 100 miles at deadhead rate, Sherman to Ennis, in addition to other earnings allowed, as follows: Firemen E. W. Mangan, July 7 and W. M. Wright, July 21, 1964:

Claim of firemen for one yard day at Miller and/or Sherman alleging yard engines without a deadman control were operated without a fireman: Miller Yard—W. N. Reed, August 15, and A. M. Blount, August 8, 1964; Sherman Yard—H. B. Baskin, August 20 and 27, H. S. Mounts, July 2, and H. L. Roberts, June 23, 1964.

Claim of Fireman F. Loughmiller, who performed no service, for 100 miles at deadhead rate, Ennis to Miller, one yard day, Miller, 11:59 PM-7:59 AM, one arbitrary hour exchanging engines, September 5, 1964, and 100 miles at deadhead rate, Miller to Ennis, September 6, 1964, in addition to any earnings which may have been allowed:

Claim of Fireman F. Loughmiller, who performed no services, for 100 miles at deadhead rate, Ennis to Sherman,

one yard day, Sherman, Yard Assignment 002, at four unit (744-929-720-7237) rate, and 100 miles at deadhead rate, Sherman to Ennis, October 12, 1964:

Claim of Firemen allegedly first-out on firemen's extra list at Ennis for 100 miles at deadhead rate, Ennis to Miller, one yard day on 3:59 PM Yard Assignment No. 205, and 100 miles at deadhead rate, Miller to Ennis, as follows: Fireman A. L. Lewis, January 16, 22, 27, 1965; Fireman F. A. Newton, January 17, 1965; Fireman W. N. Reed, December 20, 22, 1964; Fireman H. S. Mounts, January 8, 1965, alleging they should have been called to fill blank fireman's position account yard engineer using the road locomotive, which is not equipped with a deadman control, on 259's train to make a set-off and pick-up:

Mr. A. C. Byron
General Chairman, BLF&E
617 Bettes Building
Houston, Texas 77002

Dear Sir:

In my letter of May 3, 1965, four items originally presented by the BLF&E to the United States District Court, District of Columbia, were disposed of, and the above subjects contain claims for individual firemen under item listed as No. 5. You were advised that the yard-day claims would be paid and that the claims for deadheading should be taken to Special Board of Adjustment No. 88 for disposition. Subsequent to this letter Question No. 139 was presented to members of Arbitration Board No. 282. Although the Carrier does not agree with the answer given by Arbitration Board 282, we are agreeable to disposing of the claims by allowing the following named firemen mileage at deadhead rate as shown:

V. R. Blakley	—400 miles
H. S. Mounts	—800 miles
W. N. Reed	—600 miles
J. B. Miller	—224 miles

W. M. Wright —200 miles
 E. W. Mangan —200 miles
 F. Loughmiller —400 miles
 B. V. Lowry —400 miles
 A. L. Lewis —600 miles
 F. A. Newton —200 miles

This settlement is without prejudice to the position of either party, does not establish a precedent, and will not be referred to in connection with any other case.

Yours truly,

J. D. DAVIS,
Manager of Personnel.

ACCEPTED:

A. C. BYRON,
General Chairman, BLF&E.

MOTION BY BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN FOR AN ORDER IMPLEMENTING PUBLIC LAW 88-108 AND JUDGMENT BASED UPON AWARD RENDERED BY ARBITRATION BOARD NO. 282, BY REQUIRING THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS TO COMPLY WITH SAID AWARD.

[Filed January 17, 1966]

Comes now Brotherhood of Locomotive Firemen and Enginemen and moves the Court for an order requiring the Terminal Railroad Association of St. Louis (hereinafter referred to as "Terminal Railroad") to comply with the Award rendered by Arbitration Board No. 282, and with Public Law 88-108, by compensating its firemen (helpers) employees who were classified as C(6) firemen (helpers) under Part C(6) Section II, of the Award and were severed from their employment in a manner and at times not authorized by the Award and, hence, suffered a loss of wages.

As grounds for said Motion, the Brotherhood shows (as more fully set forth in the affidavit accompanying this Motion) as follows:

(1) Part C(6). Section II of the Arbitration Award provides that all firemen (helpers) with less than 10 years' seniority on the effective date of the Award January 25, 1964) and who are not classified as C(2), C(3), C(4), or C(5) firemen (helpers), shall be classified as C(6) firemen (helpers) and shall retain their right to be employed in engine service in accordance with the employment rules that were in effect on the day preceding the day before the Award became effective, unless the carrier-employer offers the C(6) firemen (helpers) comparable jobs in the manner prescribed by the Award.

(2) Part C(6), Section II, of the Award further provides that a carrier may offer its C(6) firemen (helpers) comparable jobs by posting such jobs for bids by C(6) firemen (helpers) employed in the seniority district in which the job or jobs are located, for a period of seven days, and thereafter the carrier may make a written offer of such jobs as were not bid

for during the seven days they were posted by delivering the offer to the most junior C(6) fireman (helper) then on the firemen (helpers) seniority roster in that seniority district, with the instruction that the fireman (helper) must accept the offer within three days from its receipt or his employment and seniority rights will be terminated at the end of the three day period. Thereafter the job offer may be made to the next most junior C(6) fireman (helper) on the same roster and subject to the same conditions, and so on, until the roster of C(6) firemen is exhausted.

(3) The Terminal Railroad began posting offers of alleged comparable jobs that were available to its C(6) firemen (helpers) on May 19, 1964, and thereafter posted other offers of comparable jobs, but the Terminal Railroad did not thereafter comply with the procedure prescribed by Part C(6) of the Award by delivering a written notice of the job offer to the most junior C(6) fireman (helper) on the seniority roster and allowing him three days within which to elect to accept the offer or be severed from his employment, and thereafter delivering a written notice of the job offer to the next most junior C(6) firemen (helper) subject to the same conditions, and so on. Instead, the Terminal Railroad submitted written offers of comparable jobs to its C(6) firemen in groups or multiples, and seventy-two C(6) firemen (helpers) who failed to accept the job offers were discharged in groups, all as more fully set forth in the affidavit attached hereto.

This Motion is made pursuant to the order of this Court entered on May 11, 1964, in which this Court enjoined the Brotherhood and the railway employees it represents from authorizing, permitting, or engaging in any strike over any dispute as to the meaning or the application of Award No. 282; and in which this Court reserved jurisdiction for the purpose of enabling any of the parties of this proceeding to apply to this Court at any time for such further orders as may be necessary or appropriate for the construction, carrying out, or enforcement of the judgment

entered upon the Award rendered by Arbitration Board No. 282.

Wherefore, the Brotherhood moves the Court to order the Terminal Railroad to compensate those C(6) firemen (helpers) who suffered loss of earnings by reason of being discharged in a manner contrary to the Arbitration Award and prior to the time that they might have been discharged lawfully had the carrier acted pursuant to the terms of the Award.

In the alternative, if the affirmative relief requested in this Motion is not granted, the Brotherhood moves the Court for an order rescinding its injunction of May 11, 1964, insofar as it applies to the firemen's (helpers') craft employed by the Terminal Railroad Association of St. Louis and to the Brotherhood as the representative of said craft.

Respectfully submitted,

SCHOENE AND KRAMER,
1625 K Street, N. W.,
Washington, D. C. 20006.

MILTON KRAMER,

HEISS, DAY AND BENNETT,
1622 Keith Building,
Cleveland, Ohio 44115.

HAROLD C. HEISS.

TRANSCRIPT OF PROCEEDINGS

[February 16, 1966]

* * * * *

[41] The Court: I am wondering, Mr. Kramer, and that thought has been passing through my mind since I started to read the papers on this motion the other day, whether that in itself is a construction of the award. What I would like to do is this. Continue this hearing for a few weeks. In the meantime have you submit the appropriate question. Each side can prepare its own questions to Board 282. Now the Board 282 might say we do not consider this a question of construing the award. If they say so, then I shall be glad to resume the hearing and make a decision accordingly. I am pleased with Mr. Shea's suggestion that he is going to advise his clients to consent to the creation of special boards because I should dislike very much to—and I have a high regard for national boards, but they are so crowded with work that I should just hate the thought of remitting these claimants to an agency that has to keep them waiting several years before passing on the claims, [42] because after all these involve comparatively small claims. It is the type of things most of which would go to small claims court here, but on the other hand, suppose the Board construes, says yes, that is part of the award and our construction is so and so. I think that would be binding on me.

Mr. Kramer: Your Honor, I submit there is nothing to be submitted to 282. Mr. Shea phrases the question whether they intended to abrogate Section 17. Well, we don't contend they intended to abrogate Section 17. We are in agreement on that. There is nothing to submit to them. The question is whether Section 17—

The Court: The type of question that in my opinion should be submitted to the Board is whether they construe the award as requiring claims for moneys due or for money damages, either under the award or for breach of the award, should be handled under the procedure of Section 17 of

the 1948 Agreement or not. If they answer the question in the affirmative that would dispose of it. If they say that that is outside of our jurisdiction, that it is not a question of construing the award, then I will decide the matter.

Mr. Kramer: Your Honor, we are in agreement that they did not intend to abrogate Section 17.

The Court: It is not a question of abrogating Section 17; it is a question of whether Section 17 applies to these claims.

[43] Mr. Kramer: That is right, and we would be asking them to construe, not Award 282 but to construe Section 17.

The Court: You can look at it either way. It is a borderline question. I will say I debated the matter in my own mind, too—is this a question of construing the award or isn't it, but it seems to me that the Board should be given an opportunity to give an expression first * * *.

* * *

[44] The Court: I think if you convey to them the thought that there is this matter pending before this Court and that the Court hopes that they will reach a decision, perhaps they might expedite the matter. You know, courts sometimes expedite matters when situations arise, and I am sure the Board would. During the past two years I have watched the work of the Board from the very beginning to the end. I have acquired a tremendous admiration for the Board for their approach. We may disagree with their particular decisions but I think they are careful, they are thorough, and they are highly enlightened by experience and education.

Now I would like to continue this matter and see what happens. If the Board declines to make a decision, maybe I will be willing to take the matter up without their decision. They do not decide before the hearing. The mere fact that the matter is submitted just a day or two before the hearing doesn't handicap them in deciding it.

Mr. Kramer: Well, that is how they have acted in the past. They have sometimes recessed without deciding even all the cases they intended to decide.

The Court: Perhaps both counsel can join in suggesting [45] to the Board the urgency of this matter. I think I would like to continue this hearing. I am not going to deny your motion at this time. I am going to continue the hearing in the hopes that in the meantime you gentlemen will be instrumental in getting some response from Board 282. If the Board should say this is not a question of interpretation of the award, it is not for us, that will be a signal, but I would like to have them have an opportunity first.

• • • • •

TRANSCRIPT OF PROCEEDINGS

[March 28, 1966]

* * * * *

Ruling of the Court [*]

[57] The Court: There is a motion by the Brotherhood of Locomotive Firemen and Enginemen for an order declaring that the Southern Pacific Company and all other carriers represented by certain Conference Committees are obligated, pursuant to the judgment heretofore entered in this proceeding upon the Award rendered by Arbitration Board No. 282, to pay the claims of their respective locomotive firemen employees for loss of wages and loss of other forms of remuneration caused to them by alleged violations by the carriers of the Arbitration Award, and that the validity of those claims is not dependent upon their being filed and processed in the manner prescribed by Section 17 of a collective bargaining agreement entered into on August 11, 1948.

Specifically, the claims that are enumerated in the papers attached to the motion are claims of firemen who alleged that they would have been employed on certain days if the carriers had not operated certain engines without a fireman in violation of the terms of Award 282.

The claims are for the wages that the firemen in question would have earned had they been employed on those days, as they claim they should have been.

The carriers contend that the claims should be submitted and handled pursuant to certain provisions contained [58] in a collective bargaining agreement dated November 1, 1948. These provisions are contained in Section 17 of that agreement and provide for an administrative remedy consisting of several steps within the organization of the carrier. The claims must be submitted within sixty days after the date on which it arose.

[* Reported at 253 F. Supp. 532.]

If eventually the claim is denied, recourse would be had to the National Railroad Adjustment Board.

It is claimed by the moving parties that there is no obligation to submit the claims for a determination by the administrative process in the first instance.

Section 17 starts out by providing that, "All claims or grievances arising on and after November 1, 1948 shall be handled as follows." There follows a detailed outline of the procedure.

To be sure, if this language is construed literally, the claims here presented would be subject to the provisions of Section 17 and the remedy provided by Section 17 would be exclusive.

However, it was subsequent to the date of the 1948 agreement that the compulsory arbitration resulting in Award 282 was undertaken.

After that arbitration was concluded an action to [59] impeach the Award was brought by some of the parties. That action resulted in a determination that the Award was valid.

Section 8 of the Railway Labor Act, 45 U. S. Code, 159, paragraph Second, provides that in such an event the "court shall enter judgment on the award, which judgment shall be final and conclusive on the parties."

Consequently, there is presented here a judgment of this Court confirming the Award. This Court, like all courts, has the authority, in fact the duty, of enforcing its own judgments.

Only recently the Supreme Court held that an award of the National Adjustment Board is not only final and binding but may be enforced judicially, *Gunther versus San Diego and Arizona Eastern Railway Company*, 382 U. S. 257.

So, too, the Supreme Court has held that the mere fact that there is an administrative remedy in existence in respect to a grievance of an employee of a railroad company does not bar his resort to the courts, *Moore versus Illinois Central Railroad Company*, 312 U. S. 630.

The question before the Court is not whether the claimants have a right to resort to the grievance procedure. The question is whether they are obligated to do so.

The Court is of the opinion that the prior agreement [60] may not oust the court of jurisdiction to determine a claim arising subsequently.

It is quite clear that the parties could not have had in contemplation the possibility of a compulsory arbitration sometime in the future terminating in a judgment of the court and could not have intended to provide that if there should be any claims arising under an unanticipated award or the judgment, the grievance procedure should be exclusively applicable.

The Court is of the opinion, therefore, that a claimant—and when I say a claimant, I mean the claimants involved in this motion—may resort either to the grievance procedure prescribed by Section 17 or may apply to the Court to enforce the judgment of this Court.

This is not to say that the Court will pass on every alleged claim for money individually which may be asserted under the Award. The Court may always invoke the doctrine of *forum non conveniens*.

But insofar as the claims here involved are concerned the Court is of the opinion that they may be judicially entertained without resort to the procedure under Section 17 of the 1948 agreement.

A somewhat similar conclusion was recently reached by Judge Simpson of the United States District Court for the [61] Middle District of Florida, in an unreported opinion, in *Order of Railroad Conductors and Brakemen and Brotherhood of Locomotive Firemen and Enginemen against Florida East Coast Railway Company*, rendered on February 28, 1966.

In that case the court made the following statement in regard to provisions providing for an internal grievance procedure: "Those provisions of the contract imposing time limitations upon the processing of individual grievances, specifically those contained in Article 19 of said agreement, have no application to and impose no limitation on this Court's power to enforce its injunction entered January 6, 1965 in this cause."

I concur with the principle on which that statement is based and reached the conclusion that the limitations prescribing the use of grievance procedure within a certain

specified period have no application and impose no limitation on the power of this Court to enforce its judgment confirming the Award of Board 282.

Counsel may submit a proposed judgment in accordance with this ruling.

The Court might add that the case of Republic Steel Corporation against Maddox, 379 U. S. 650, is clearly distinguishable because that case involved a claim for money [62] due under a collective bargaining agreement, whereas in this case we are confronted with a claim under an award of a compulsory arbitration board established by Congress, the award having been later confirmed by the Court.

• • • • •

TRANSCRIPT OF PROCEEDINGS

[April 6, 1966]

* * * * *

[20] Mr. Kramer: This is the proposed order on the applicability of Section 17.

The Court: Yes. If you will just bear with me a moment while I read this. I haven't seen this before.

(Pause)

The Court: Have you any objection, Mr. Shea?

Mr. Shea: Yes. May I address myself to our objections, Your Honor.

There are three points which I would like to discuss very briefly with Your Honor because those three points indicate where our differences lie.

In the first place, I understood Your Honor to determine that you were—while your opinion would, of course, stand as a precedent on claims which were not presented—that you were limiting your disposition of the matter to the concrete cases presented to you, certainly for purposes of judgments.

The Court: Yes. I think that could be easily taken care of.

[21] Mr. Shea: We have proposals, a proposed judgment which takes care of that.

The Court: What is your proposed—

Mr. Shea: Shall I hand that up to Your Honor?

The Court: Yes.

(Pause)

The Court: Your second paragraph, Mr. Shea, is a matter I did not deal with.

Mr. Shea: That, I haven't addressed myself to, as yet. I have addressed myself only to the first paragraph.

The Court: I have a suggestion. Suppose we do this. Insert, after the words "declared and decreed," "claims or grievances of the Brotherhood of Locomotive Firemen

and Enginemen and the Firemen Helpers it represents referred to in the motion." That would be directed to the specific claims.

Do you have any objection to the insertion of that?

Mr. Shea: That would be wholly acceptable.

Mr. Kramer: It was not my understanding at all that your ruling was limited to the specific claims contained in the affidavit that accompanied the motion. This was a motion for declaratory judgment against the Southern Pacific and other carriers, asking the Court to declare that Sections—

[22] The Court: Yes, I know, but I said in the course of the discussion that I would not rule on hypothetical cases not before me, that my ruling would be directed to the claims involved.

I realize, of course, that every ruling may be a precedent for other claims, but the ruling must be directed to the claims before me.

Mr. Kramer: Your Honor, if it's limited to those particular claims, then it wouldn't even be an adjudication that Section 17 doesn't apply to terminating C-6 firemen improperly.

The Court: Well, I think it does.

I am going to insert the words, "referred to in the motion," after the second line of the first ordering paragraph.

Mr. Kramer: May I ask just where that is?

The Court: Let me read it to you: "Declared and decreed that claims or grievances of the Brotherhood of Locomotive Firemen and Enginemen and the Firemen Helpers it represents referred to in the motion, based on alleged violations," and so on.

* * * * *

[25] Mr. Shea: Now, the third point is this, Your Honor. As I understood your decision, and certainly there was a good deal in what you had to say, and if it will be helpful I will read to you what you had to say, but I am sure you have full recollection of it yourself, as I understood what you had to say on the matter of time limit on claims rule

not being applicable, you held that the men had an election of remedies.

The Court: I did.

Mr. Shea: They could either pursue their remedies under the procedures which had been established for claims, or they might come directly to the court.

The Court: That is right.

Mr. Shea: Now, the law is that where you have an election of remedies, if you elect to pursue the procedures, the administrative procedures, you can't abandon, you must [26] follow through on those procedures.

The Court: Oh, I am not so sure about that. I am not so sure that there is such a thing as a binding election of remedies, and, certainly, I did not pass upon that. I did not intend to.

In other words, suppose a person files a claim under the grievance procedure and then, after awhile, he comes to the conclusion that maybe he would rather go to court and abandon his proceeding under Section 17 of the 1948 Agreement. I would be inclined to the view that he would have a right to do it. I am not going to rule that he would have, but I certainly don't want to rule definitively that he wouldn't.

Mr. Shea: Well, if the Court please, this matter is squarely raised in this proceedings and will be squarely covered by this order because certain of the claims which were asserted they went forward with under the administrative procedure.

The Court: That may be so, but my recollection is, Mr. Shea, that the question as to whether the election of remedies was binding and conclusive was not argued before me by either side orally, as I recall it, and, therefore, I don't feel that I should rule on that.

Mr. Shea: All right. Well, then, may I understand [27] that at this time you are not ruling on that?

The Court: I am not ruling either way on that.

Mr. Shea: That is right. And we may come back to you on that issue and fully brief it.

The Court: Yes. Then I will sign Mr. Kramer's draft with the interlineation that I have indicated.

Mr. Shea: And, Your Honor, just for purpose of clarification, the specific claims you find by reference to the affidavits in connection with the motion, and I take it that that is what you have in mind.

The Court: Oh, yes.

Mr. Shea: It is the claims which are made explicit by the papers filed with the motion.

The Court: Yes. * * *

* * * * *

ORDER GRANTING MOTION OF BROTHERHOOD OF LOCOMOTIVE
FIREMEN AND ENGINEMEN FOR SUPPLEMENTAL RELIEF
AGAINST SOUTHERN PACIFIC COMPANY AND OTHER
CARRIERS.

[Filed April 6, 1966]

This matter came on to be heard on February 16, 1966, and March 28, 1966, and the Brotherhood of Locomotive Firemen and Enginemen having filed a Memorandum of Points and Authorities and affidavits in support of its Motion, and the Southern Pacific Company and other carriers having filed a Memorandum of Points and Authorities and an affidavit in opposition to said Motion and a Supplemental Memorandum of Points and Authorities, and the Court being fully advised and having delivered its Opinion on said Motion on March 28, 1966, it is hereby

DECLARED AND DECREED, that claims or grievances of the Brotherhood of Locomotive Firemen and Enginemen and the firemen (helpers) it represents, referred to in the motion, based on alleged violations or misapplications of Award of Arbitration Board No. 282, on which Award judgment was entered by this Court on February 28, 1964, are not subject to the compulsory grievance procedure established by section 17 of a certain collective agreement entered into on August 11, 1948 by the Brotherhood of Locomotive Firemen and Enginemen and other labor unions on the one hand and on the other hand by the Southern Pacific Company and numerous other carriers; and such claims or grievances, if otherwise valid, may be enforced without the Brotherhood or the employees it represents first resorting to the procedure established by section 17 of the said 1948 agreement.

/s/ ALEXANDER HOLTZOFF,
United States District Judge.

April 6, 1966

ORDER WITH RESPECT TO MOTION BY THE BROTHERHOOD OF
LOCOMOTIVE FIREMEN AND ENGINEMEN FOR SUPPLEMENTAL
RELIEF AGAINST THE TERMINAL RAILROAD ASSOCIATION OF
ST. LOUIS.

[Filed April 6, 1966]

This Court having sustained the Award made by Arbitration Board No. 282 and filed with this Court pursuant to Public Law 88-108, 77 Stat. 132, in *Brotherhood of Locomotive Firemen and Enginemen v. Chicago, Burlington & Quincy Railroad Co.*, 225 F. Supp. 11, aff'd, 118 U.S. App. D. C. 100, 331 F. 2d 1020, cert. denied, 377 U.S. 918; and this Court having entered judgment on said Award on February 28, 1964;

This Court having, on May 11, 1964, entered an order enjoining the Brotherhood of Locomotive Firemen and Enginemen (hereinafter referred to as the "BLF&E") and certain others from striking over any dispute as to the meaning or application of the Award and reserving jurisdiction over applications for such further orders as might be necessary or appropriate for the construction, carrying out, or enforcement of the said order of May 11, 1964 or of the judgment upon the Award or of any legal obligation resulting therefrom (see *In Re Certain Carriers, Etc.*, 229 F. Supp. 259);

The BLF&E having filed, on January 17, 1966, a Motion for Supplemental Relief Based upon Public Law 88-108 and Judgment on Arbitration Award, against Terminal Railroad Association of St. Louis, hereinafter TRRA), together with a supporting affidavit by Albert B. Cole, in which it was alleged that the TRRA had violated or was violating the Award relative to the manner in which it terminated the employment of certain firemen (helpers) known as C(6) firemen (helpers), and in which the Court was requested to order TRRA to compensate the individuals injured by past such alleged violations for their damages, or, in the alternative, to rescind its injunction of May 11, 1964, insofar as it applies to the firemen's (helpers') craft employed by the TRRA;

TRRA having filed an affidavit by J. W. Hammers in opposition to the said motion for supplemental relief;

TRRA and the BLF&E having filed memoranda of points and authorities in support of their respective positions, a hearing having been held on March 14, 1966 and oral argument having been had, and this Court having determined to hold the matter in abeyance pending rulings by Arbitration Board No. 282 upon the issue as to the meaning and application of its Award which were disputed by the parties in connection with the motion for supplemental relief;

TRRA having submitted to Arbitration Board No. 282 a question deemed by it to raise the disputed issues as to the meaning and application of the Award, the BLF&E having submitted to Arbitration Board No. 282 a question deemed by it to raise the disputed issues as to the meaning and application of the Award, and Arbitration Board No. 282 having ruled upon those questions on March 29, 1966 and filed its rulings with this Court on April 1, 1966;

A further hearing having been held on April 5, 1966 and oral argument having been had;

The Court, upon due consideration of the aforesaid matters, having determined that: (1) the answer by Arbitration Board 282 on March 29, 1966, to the aforesaid questions submitted by the parties establishes that the carrier's procedures were improper under the Award in terminating the employment of the aforesaid C(6) firemen (helpers); (2) the Court has the right in its equitable discretion to annex conditions to the injunction granted in its order of May 11, 1965; (3) in the exercise of this right to annex conditions to its injunction, and in view of the circumstances revealed by the record with respect to these particular claims, the Court will make a ruling as to the substantive rights of the 71 former C(6) firemen (helpers) asserted in their behalf by the BLF&E in this proceeding, and leave to a local tribunal the adjustment and computation of their individual claims, as follows: (a) each of the 71 former C(6) firemen (helpers) should be paid the wages which he would have earned during the additional period, if any, in which he would have been employed by the TRRA subject to his duty to mitigate or avoid damages to the extent reasonably possible in the exercise of due diligence; (b) the said former C(6) firemen (helpers) should

not be held to have waived their rights to such compensation under the circumstances here involved by accepting severance pay under the Award without protesting the procedures followed by the TRRA; (c) the claims of the said former C(6) firemen (helpers) should not be barred under the circumstances here involved by any failure on their part to invoke or to exhaust the contract grievance procedure established in agreements between the TRRA and the BLF&E; and (d) the claims of the said former C(6) firemen (helpers) should be referred for determination, in accordance with the principles herein declared, by some tribunal of a local character which may be agreed upon by the TRRA and the BLF&E;

WHEREFORE, IT IS HEREBY ORDERED:

That the continued effect of paragraph 1 of the order of this Court, dated May 11, 1964, in the above-entitled proceeding, insofar as such paragraph permanently enjoins the Brotherhood of Locomotive Firemen and Enginemen, its officers, agents, employees, members, and all persons acting in concert with them, from authorizing, calling, encouraging, permitting, or engaging in any strikes or work stoppages with respect to the TRRA, and from picketing the premises of the TRRA, over any dispute as to the meaning or application of the Arbitration Award on which judgment heretofore has been entered in the above-entitled proceeding, in conditioned as follows:

(a) Upon consent by the TRRA, within five days after receipt of a written request therefor by the BLF&E, to the submission, for consideration and determination in accordance with the principles declared herein, of claims on behalf of any of the 71 former C(6) firemen (helpers), who authorize the BLF&E to submit such claims on their behalf, to a tribunal agreed upon by the TRRA and the BLF&E; *provided*, that if the TRRA and the BLF&E are unable to agree upon the creation of some tribunal of a local character to consider and determine such claims, the issue as to the tribunal which is to consider and determine the claims may be submitted by either party to this Court for further consideration; and *provided further*, that this

paragraph shall be inapplicable to claims on behalf of any of the 71 former (C6) firemen (helpers) which are disposed of by agreement between the TRRA and the BLF&E.

(b) Upon payment within a reasonable time by the TRRA to each such former C(6) firemen (helpers) who is found by the tribunal of a local character to be entitled to compensation under the principles determined by this Court of the amount of compensation which the tribunal finds should be paid under the principles determined by this Court.

Dated: April 6, 1966

/s/ ALEXANDER HOLTZOFF,
United States District Judge.

CARRIERS' MOTION TO AMEND ORDER GRANTING MOTION OF
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN
FOR SUPPLEMENTAL RELIEF AGAINST SOUTHERN PACIFIC
COMPANY AND OTHER CARRIERS, DATED APRIL 6, 1966.

[Filed April 18, 1966]

The Southern Pacific Company and other carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees respectfully move that this Court's "Order Granting Motion of Brotherhood of Locomotive Firemen and Enginemen for Supplemental Relief Against Southern Pacific Company and Other Carriers," dated April 6, 1966, be amended by adding at the end of the body thereof the following paragraph or its substance:

"FURTHER ORDERED AND DECREED that any such claims and grievances which the Brotherhood or the employees it represents presented to the carrier in the manner and within the time period prescribed by section 17 of the 1948 agreement, which claims and grievances were disallowed by the officer of the carrier authorized to receive claims and grievances, are subject to the conditions of section 17 of the 1948 agreement and were required to be appealed in the manner and within the time periods prescribed by section 17, and any such claims and grievances which were not appealed in the manner and within the time periods prescribed by section 17 are barred to the extent provided in section 17."

As grounds for this motion, the carriers show as follows:

1. The Brotherhood's motion for supplemental relief, filed December 5, 1965, asked this Court to declare that claims of firemen (helpers) based on the carriers' violations or misapplications of the Award of Arbitration Board No. 282 must be paid without regard to the terms of a collective bargaining agreement entered into on August 11, 1948, by the Brotherhood and the carriers. Section 17 of that agreement prescribes the procedure for handling claims and grievances and imposes certain time limits for presenting and appealing such claims and grievances. To illustrate its

motion, the Brotherhood identified certain specific claims based on alleged violations or misapplications of the Award of Arbitration Board No. 282 which the Southern Pacific Company (Texas & Louisiana Lines) had refused to pay. Of these claims, 31 had not been presented to the carrier within the 60 day time limit prescribed by section 17; 16 had been presented within the prescribed time, had been disallowed, and had not been appealed within the 60 day period prescribed by section 17; and 1 had never been presented to the carrier at all before its inclusion in the Brotherhood's motion for supplemental relief.

2. On March 28, 1966, this Court, after considering the parties' memoranda and arguments, upheld the Brotherhood's contention that claims of firemen (helpers) included in the motion for supplementary relief may be enforced either through the grievance procedure provided in section 17 or through a proceeding in court for enforcement of the judgment on Award 282. Accordingly, on April 6, 1966, this Court signed an order declaring:

"... that claims or grievances of the Brotherhood of Locomotive Firemen and Enginemen and the Firemen (helpers) it represents, referred to in the Motion, based on alleged violations or misapplications of Award of Arbitration Board No. 282, on which Award judgment was entered by this Court on February 28, 1964, are not subject to the compulsory grievance procedure established by section 17 of a certain collective agreement entered into on August 11, 1948 by the Brotherhood of Locomotive Firemen and Enginemen and other labor unions on the one hand and on the other hand by the Southern Pacific Company and numerous other carriers; and such claims or grievances, if otherwise valid, may be enforced without the Brotherhood or the employees it represents first resorting to the procedure established by section 17 of the said 1948 agreement."

3. At the hearing to settle the form of the foregoing order, the Court declined to decide whether and under what conditions the prosecution of a claim under the provisions of section 17 would constitute a binding election between

the two available remedies, barring later resort to court for enforcement of the same claim. The Court accepted the suggestion that the parties might return to it with briefs on that issue. (April 6, 1966, Tr. 27.) This motion to amend the order of April 6, 1966, is intended to take advantage of the Court's invitation and to submit the issue for decision.

4. The election of remedies issue is squarely raised by several of the claims included in the Brotherhood's motion for supplementary relief. The Carriers take the position that claimants who sought to enforce their claims under Award 282 (or for whom such claims were sought to be enforced by the Brotherhood) by timely resort to the grievance procedure established by section 17 of the 1948 agreement must abide by the rules prescribed for that procedure and are subject to all the conditions of that section, and that the claims of firemen (helpers) which were made pursuant to the grievance procedure but were appealed out of time must be considered barred, as provided in section 17. The carriers' argument in support of this position is stated in the memorandum of points and authorities attached to this motion.

For the reason set forth above and in the memorandum of points and authorities filed herewith and for such further reasons as may appear at the hearing on this motion, the carriers respectfully submit that this motion to amend the order dated April 6, 1966, should be granted.

Respectfully submitted,

FRANCIS M. SHEA
 RICHARD T. CONWAY
 RALPH J. MOORE, JR.
 DAVID W. MILLER
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Attorneys for the Carriers.

SHEA & GARDNER
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Of Counsel.

STIPULATION DISMISSING APPEAL OF TERMINAL RAILROAD
ASSOCIATION OF ST. LOUIS

[Filed May 19, 1966]

The Terminal Railroad Association of St. Louis and The Brotherhood of Locomotive Firemen and Enginemen, by their attorneys, hereby stipulate pursuant to Rule 73, Federal Rules of Civil Procedure, that the appeal of The Terminal Railroad Association of St. Louis from the "Order With Respect to Motion by The Brotherhood of Locomotive Firemen and Enginemen for Supplemental Relief Against the Terminal Railroad Association of St. Louis," filed April 6, 1966, to the United States Court of Appeals for the District of Columbia Circuit, be dismissed without costs.

Dated: May 18, 1966

RICHARD T. CONWAY

Shea and Gardner

734 Fifteenth Street, N.W.

Washington, D.C.

*Attorney for The Terminal Railroad Association of
St. Louis.*

Dated: May 18, 1966

MILTON KRAMER

Schoene and Kramer

1625 K Street, N.W.

Washington, D.C.

*Attorney for The Brotherhood of Locomotive Firemen
and Enginemen*

APPROVED:

Dated: May 19, 1966

ALEXANDER HOLTZOFF,

United States District Judge

TRANSCRIPT OF PROCEEDINGS

[June 2, 1966]

.

Opinion of the Court [*]

[40] The Court: By its decision of March 28th, 1966 this Court ruled on a motion made by the Brotherhood of Locomotive Firemen and Enginemen that locomotive firemen who had claims for loss of wages or other forms of remuneration caused by failure to employ them on certain days because of violations of Arbitration Award 282 had a choice of remedies, either an administrative remedy prescribed by the collective bargaining agreement or by a judicial proceeding in this court or in other courts that have jurisdiction.

The carriers involved in that motion have now moved to amend the order so that it would provide, in effect, that if a claimant instituted an administrative remedy and abandoned it before the remedy was concluded, he may not then resort to a judicial remedy.

Obviously if a claimant had pursued the administrative remedy to the end, including an appeal to the special adjustment board and had not prevailed, he would be barred from pursuing a judicial remedy. The question here presented is a narrow one. Suppose he abandons his administrative remedy in the course of pursuing it and before he reaches [41] the consummation of that remedy, may he then resort to a judicial remedy.

It must be borne in mind that some of these claims arise out of what might be called a safety provision in Award 282. The basic background of those aspects of the Award which relate to dispensing with the use of firemen on most freight engines is that while two men are necessary in a locomotive cab, actually there were three men on freight engines, the third man being the head brakeman, and that one of them

[* Reported at 255 F. Supp. 290.]

could be dispensed with and that was the fireman. There was a provision that in yard service engines could be operated without a fireman, provided they were equipped with a deadman's button.

Several of the claims involved in this motion arise out of the fact that on several occasions road engines were used in yard service without a fireman and, naturally, road engines were not equipped with deadman's buttons. Consequently, the claims of firemen who would have been employed on those occasions for the wages that they would have earned, although are somewhat synthetic and artificial, they are a means of enforcing or imposing a sanction on failure to comply with this provision which has an aspect of [42] safety.

Other claims arise from failure to use firemen under other circumstances where, perhaps, safety was not involved.

Counsel for the plaintiffs makes a very cogent argument, basing it on a line of cases arising out of collective bargaining agreements which provide for an administrative remedy. The cases in question hold that even if there is a remedy by way of a judicial proceeding, once the claimant, that is, the employee, resorts to his administrative remedy he is bound to exhaust it.

The situation here is different. These claims do not arise under a collective bargaining agreement. To be sure, this Court has held that the Arbitration Award—and it must be borne in mind that it was a compulsory arbitration prescribed by the Congress—had some of the same effects that a collective bargaining agreement would have and that it created a new status by way of conditions of employment and so on, a status that cannot be changed except by recourse to the Railway Labor Act. But the Award had certain additional weight beyond that which would make it equal to a collective bargaining agreement. It was an award of a compulsory [43] arbitration board which was, in an action to impeach it, confirmed by this Court in a proceeding resulting in a judgment of this Court. It was because of this difference, in part, at least, that the Court held that the administrative remedy was not exclusive because the administrative remedy applied to claims under collective bargaining agreements.

We then must resort to basic principles. There is indeed a doctrine known as election of remedies and there are cases that hold, in effect, that if there are two remedies, if the claimant elects one he may not thereafter abandon it and pursue another. But this is too broad a statement. The better doctrine is that election of remedies is binding only if the second remedy that is sought to be invoked is based on a theory which is irreconcilable with that upon which the first proceeding was founded. We have, of course, the familiar example of a person suing for rescission of a contract on the ground that it was obtained by fraud, who may not thereafter ratify the contract and sue for damages, the theory being that the second remedy is irreconcilable and inconsistent with the first.

But if the two remedies are not inconsistent and are not irreconcilable, the doctrine of election of remedies [44] does not apply. This was held in a case decided many years ago by the Court of Appeals for the Second Circuit, *Equitable Trust Co. of New York v. Connecticut Brass & Mfg. Corp.*, 10 F. 2d 913. It should be noted that Judge Learned Hand was a member of the panel that sat in that case and concurred in the decision.

So it seems to the Court that as a matter of pure theory of law there is no inconsistency here and that therefore there should be no bar to pursuing the judicial remedy after abandoning the administrative remedy subsequent to its institution.

The situation would be different if the administrative remedy had been pursued to the end and a definitive rejection of the claim had been reached.

But there are practical considerations here. There was a period of uncertainty in which a claimant could not be sure whether he had a judicial remedy or an administrative remedy or both, and it was not unnatural for him to protect himself by filing a claim in view of the fact that there was a sixty-day limitation upon the filing of the claim. So, too, it must be borne in mind that these claims were not filed through lawyers; they were filed by employees, who are [45] not legally trained, in their own behalf.

It might be argued, of course, that there must be some time limitation. That was argued before this Court on a

previous occasion. It seems to this Court that the Supreme Court has answered that in a recent decision in which it held that the local statutes of limitations would apply to claims of employees.

In view of these considerations the Court reaches the conclusion that a claimant presenting a claim of the type involved in this motion for administrative consideration and who abandons his administrative remedy before it reaches a conclusion is not barred from pursuing such judicial remedies as he may otherwise have.

The motion is denied.

• • • • •

ORDER DENYING CARRIERS' MOTION TO AMEND ORDER GRANTING MOTION OF BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN FOR SUPPLEMENTAL RELIEF AGAINST SOUTHERN PACIFIC COMPANY AND OTHER CARRIERS, ENTERED APRIL 6, 1966.

[Filed June 2, 1966]

The carriers having filed a motion to amend the order entered by this Court on April 6, 1966 granting the motion of Brotherhood of Locomotive Firemen & Enginemen for supplemental relief against Southern Pacific Company and other carriers, and the carriers having filed a Memorandum of Points and Authorities in support thereof, and the Brotherhood of Locomotive Firemen & Enginemen having filed a Memorandum of Points and Authorities in opposition thereto, and the carriers having filed a Memorandum of Points and Authorities in reply to the Brotherhood's memorandum, and the parties having been heard in open court on June 2, 1966, and the Court being fully advised, it is hereby

Ordered, that the aforesaid carriers' motion to amend the aforesaid order of April 6, 1966 be and it hereby is denied.

ALEXANDER HOLTZOFF,
United States District Judge

June 2, 1966

No objection as to form:

RICHARD T. CONWAY,
Counsel for Certain Carriers.

MILTON KRAMER,
*Counsel for Brotherhood of
Locomotive Firemen & Enginemen.*

NOTICE OF APPEAL

[Filed June 28, 1966]

Notice is hereby given that the Southern Pacific Company and the other certain carriers represented by the Eastern, Western and Southeastern Carriers Conference Committees, parties to the above-entitled proceeding, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the "Order Granting Motion of Brotherhood of Locomotive Firemen and Enginemen for Supplemental Relief against Southern Pacific Company and other Carriers," dated and entered herein on April 6, 1966, and from the "Order Denying Carriers' Motion to Amend Order Granting Motion of Brotherhood of Locomotive Firemen & Enginemen for Supplemental Relief against Southern Pacific Company and other Carriers, Entered April 6, 1966," dated and entered herein on June 2, 1966.

Dated: June 28, 1966

/s/ RICHARD T. CONWAY
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(9441-7)

BRIEF FOR APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,378

SOUTHERN PACIFIC COMPANY, ET AL., *Appellants,*

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND
ENGINEMEN, *Appellee.*

APPEAL FROM ORDERS OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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United States Court of Appeals
for the District of Columbia Circuit

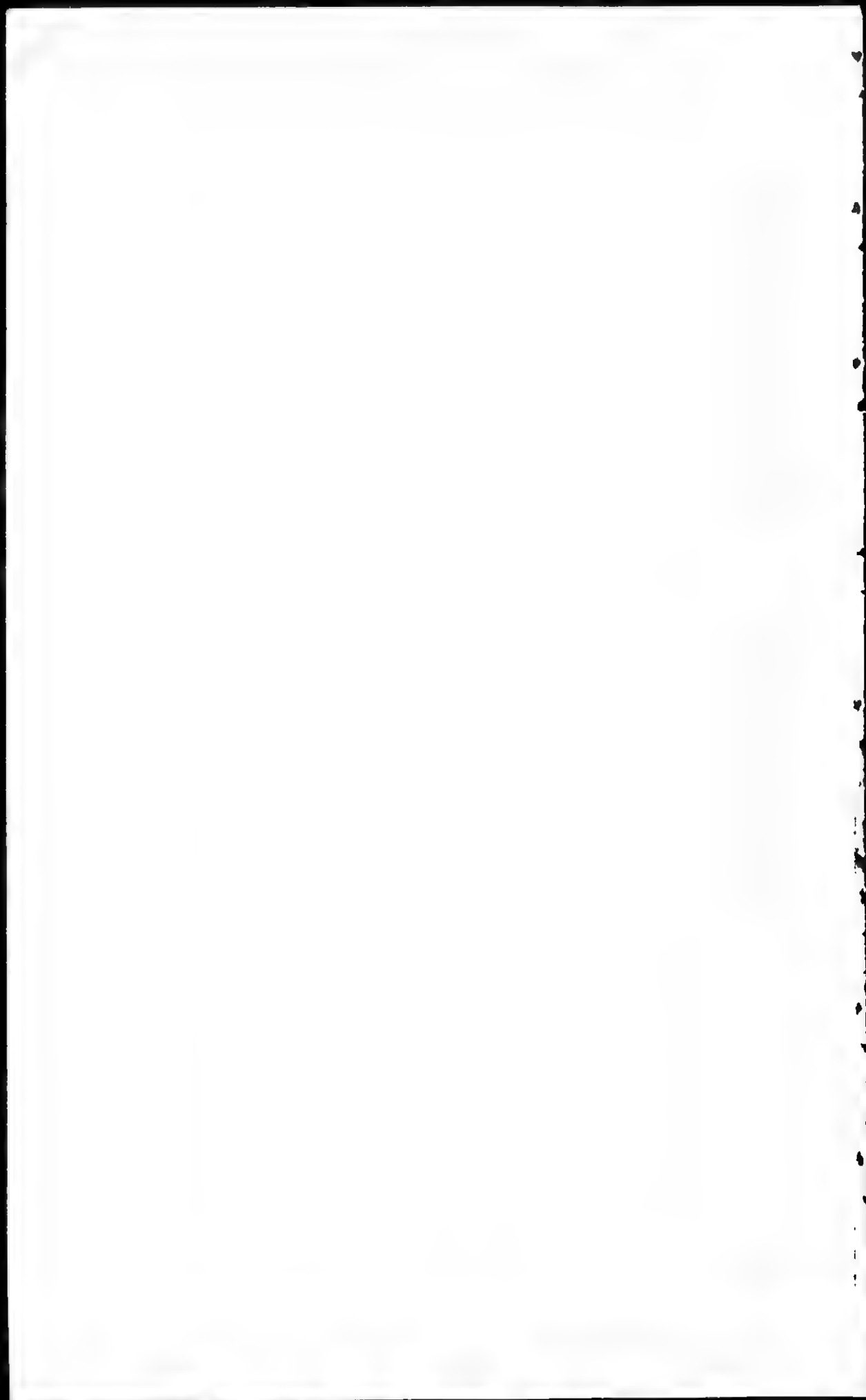
JAMES R. WOLFE
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FILED OCT 3 1966

Nathan J. Paulsen

CLERK





QUESTIONS PRESENTED

1. With respect to the order granting the Brotherhood's motion for supplemental relief, the question is whether the District Court erred in holding that the individual claims asserted in the motion, based on alleged violations by the carrier of the Award of Arbitration Board No. 282, may be enforced without regard to the provisions of an agreement between the Brotherhood and the carrier prescribing a procedure for "handling all claims or grievances."

A. Are not individual claims arising out of alleged violations of the Award subject exclusively to the procedures of section 3 of the Railway Labor Act, so that the District Court had no jurisdiction of the claims?

B. Was the District Court competent to construe the agreement, in view of (a) the administrative procedure provided by section 3 of the Railway Labor Act and (b) the parties' undertaking to refer "any dispute or controversy * * * as to the interpretation or application" of the agreement to a special tribunal?

C. If the District Court was competent to construe the agreement, should not the agreement be construed as being fully applicable to individual claims arising out of alleged violations of the Award, thus barring claims which were not presented within the time limits prescribed by the agreement?

D. Is a declaration as to the enforceability of individual claims necessary or appropriate to the enforcement of the District Court's judgment on the Award?

2. With respect to the denial of the carriers' motion to amend the order granting the Brotherhood's motion for supplemental relief, the question is whether the District Court erred in declaring enforceable those claims which had initially been handled pursuant to the procedures prescribed by the agreement, denied on the merits, and not appealed in accordance with the agreement, which provides that claims which are denied but not appealed shall be barred.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,378

SOUTHERN PACIFIC COMPANY

and

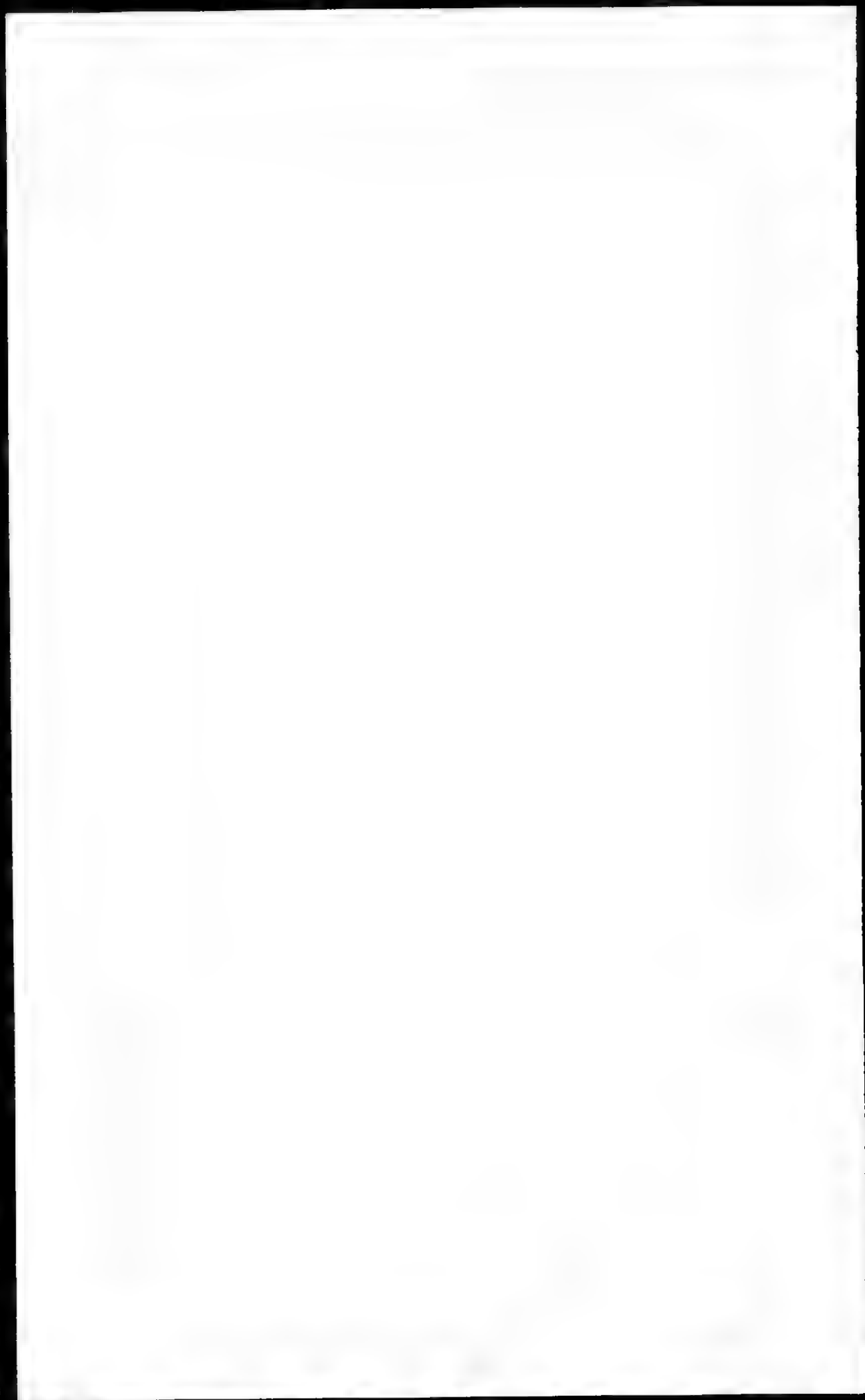
CERTAIN CARRIERS REPRESENTED BY THE
EASTERN, WESTERN, AND SOUTHEASTERN
CARRIERS' CONFERENCE COMMITTEES, *Appel-*
lants,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND
ENGINEMEN, *Appellee*

APPEAL FROM ORDERS OF THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLANTS



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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,378

SOUTHERN PACIFIC COMPANY, ET AL., *Appellants*,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND
ENGINEMEN, *Appellee*.

APPEAL FROM ORDERS OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT

The jurisdiction of the District Court to enter the judgment (February 28, 1964) and order (May 11, 1964) which the orders appealed from supplemented was based on section 4 of Public Law 88-108, 77 Stat. 133 (1963), on section 9 of the Railway Labor Act, 44 Stat. 585, as amended, 45 U.S.C. § 159, and on 28 U.S.C. §§ 1337 and 1651. The jurisdiction of the District Court to enter the orders appealed from does not otherwise appear in the record.

The jurisdiction of this Court is based on 28 U.S.C. § 1291.

The order granting the motion for supplemental relief was entered on April 6, 1966 (J.A. 330). A motion to amend the order was filed on April 18, 1966 (J.A. 334). This motion was denied by an order entered June 2, 1966 (J.A.

342). The notice of appeal from both orders was filed on June 28, 1966 (J.A. 343).

Statement of the Case*

This appeal involves the question of the justiciability and enforceability of certain claims by locomotive firemen arising out of alleged violations of the Award of Arbitration Board No. 282. The District Court overruled the appellant carriers' contention that the procedure prescribed by an existing collective bargaining agreement for handling "all claims or grievances" is the exclusive remedy for such claims and ruled, instead, that it had jurisdiction to declare the enforceability of the claims asserted in this case by a motion for supplemental relief under the judgment upholding the validity of the Award.

I. Background

A. National Rules Agreement

On August 11, 1948, most of the nation's railroads, including appellant Southern Pacific Company (hereinafter called the "carrier" or "Southern Pacific"),¹ and three of the organizations representing their employees, including

* The undisputed facts on which the orders appealed from were based were established by affidavits filed in the District Court. The appellee filed an affidavit by Allen C. Byron, appellee's General Chairman on the lines involved (J.A. 252-271), which incorporated by reference an affidavit by Mr. Byron that had been filed by appellee in connection with an earlier motion for supplemental relief (J.A. 27-172). Appellee also filed an affidavit by H. E. Gilbert, appellee's President (J.A. 249-251). Appellants filed an affidavit by E. S. Lohrke, Assistant Manager of Personnel for the Southern Pacific Company, Texas and Louisiana Lines (J.A. 272-314), which incorporated by reference an affidavit of Mr. Lohrke that had been filed by appellants in connection with appellee's earlier motion for supplemental relief (J.A. 173-236).

¹ The events giving rise to this appeal occurred on the Texas and Louisiana Lines of Southern Pacific, and references herein to Southern Pacific are limited to the Texas and Louisiana Lines unless the context indicates otherwise.

appellee the Brotherhood of Locomotive Firemen and Enginemen (hereinafter called the "BLF&E"), entered into a collective bargaining agreement known as the National Rules Agreement (J.A. 264-268).

Section 17 of the National Rules Agreement, entitled "Time Limit on Claims," established a procedure for handling "all claims or grievances." Briefly, it provided for the presentation of claims or grievances to an officer of the carrier "authorized to receive same," and a succession of appeals from disallowances up to "the highest officer [of the carrier] designated to handle claims and grievances," and from there to any "tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved." Under section 17, all claims or grievances must be presented initially "within sixty days from the date of the occurrence on which the claim or grievance is based." At each level of initial presentation and intermediate appeal, a claim "shall be considered valid and settled accordingly" if notice of disallowance is not given within sixty days after the claim has been filed with the appropriate officer. Conversely, "the matter shall be considered closed" if an appeal to the appropriate officer is not taken within sixty days after receipt of a timely notice of disallowance. A decision by the highest officer designated to handle claims and grievances is "final and binding," and a claim or grievance which is not appealed within six months after such a decision to "a tribunal having jurisdiction" "shall be barred." The relevant language of the rule is quoted in the margin.²

² "Section 17—Time Limit on Claims.

"All claims or grievances arising on and after November 1, 1948 shall be handled as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the company authorized

On June 29, 1949, the same parties entered into a supplementary "Memorandum Agreement" establishing a "Joint Committee" to which "any dispute or controversy arising on any carrier as to interpretation or application of any of the terms of the [National] Rules Agreement * * * shall be referred * * *."³

to receive same, within sixty days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within sixty days from the date same is filed, notify the employee or his representative of the reasons for such disallowance. If not so notified, the claim or grievance shall be considered valid and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of the carrier as to other similar claims or grievances.

"(b) If a disallowed claim or grievance is to be appealed, such appeal must be taken within sixty days from receipt of notice of disallowance, and the representative of the carrier shall be notified of the rejection of his decision. Failing to comply with this provision the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employees as to other similar claims or grievances.

"(c) The procedure outlined in paragraphs (a) and (b) shall govern in appeals taken to each succeeding officer. Decision by the highest officer designated to handle claims and grievances shall be final and binding unless within sixty days after written notice of the decision of said officer he is notified in writing that his decision is not accepted. All claims or grievances involved in a decision of the highest officer shall be barred unless within six months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved. It is understood, however, that the parties may by agreement in any particular case extend the six months period herein referred to." (J.A. 266)

³ The pertinent language of the Memorandum Agreement reads:

"Any dispute or controversy arising on any carrier as to interpretation or application of any of the terms of the Rules Agreement, dated at Washington, D. C., August 11, 1948, and not settled on such carrier, shall be referred jointly, or by either party, for decision to a committee, the carrier members of which shall be three members of the Carriers' Conference Committees signatories thereto, or their successors, and the employee members of which shall be one representative selected by each of the three organizations signatories thereto, or their representatives, or successors. Decisions of such Committee shall be final and binding."

* * *

"It is agreed that this Joint Committee, when established, will be a tri-

These agreements were in effect between the parties at the time of the occurrences giving rise to this appeal (J.A. 255, 273).

B. Arbitration Award and Judgment

For many years prior to 1959, collective bargaining agreements on most of the nation's railroads required that firemen be assigned to almost all engine crews. In 1959, the carriers proposed to abolish these agreements with respect to non-steam powered locomotives in freight and yard service. The dispute over this and other proposals culminated in the threat of a nationwide rail strike in 1963 after the "major" dispute procedures of the Railway Labor Act, 45 U.S.C. §§ 155-160, had been exhausted without a settlement. See *Brotherhood of Locomotive Engineers v. Baltimore & O.R.R.*, 372 U. S. 284 (1963). To prevent such a disaster, Congress enacted Public Law 88-108, 77 Stat. 132, on August 28, 1963. That law submitted the firemen's dispute, along with a dispute over the consist of train crews, to a specially constituted arbitration board—later designated as Arbitration Board No. 282—for "complete and final disposition."

The Award of Arbitration Board No. 282 (J. A. 5-12) provided for gradual elimination of firemen's positions on all but ten per cent of the regular assignments on non-steam powered locomotives in freight and yard service. It also awarded substantial employment guarantees and severance pay benefits to men employed as firemen. Although the Award established specific standards and pro-

bunal within the meaning of paragraph (c) of Section 17 of such agreement. In cases where the Joint Committee is deadlocked and no other disposition of the case is agreed upon by the Joint Committee then the parties shall have six months from the date of such deadlock to progress the case to a tribunal having jurisdiction pursuant to law or agreement." (J.A. 288)

cedures for eliminating firemen's jobs, it did not establish or prescribe any procedure for handling individual money claims based on alleged misapplications of these standards and procedures. On its face, the Award did not purport to modify or render inapplicable the claim and grievance procedure agreed to in the National Rules Agreement. Indeed, Section II, Part A of the Award expressly provided that

"All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award." (J.A. 5.)

As the carriers began implementing the Award, following its confirmation by the court below and by this Court on appeal, *Brotherhood of Locomotive Firemen & Enginemen v. Chicago, B. & Q.R.R.* 225 F. Supp. 11 (D. D.C.), aff'd, 118 U. S. App. D. C. 100, 331 F. 2d 1020 (D. C. Cir.), cert. denied, 377 U.S. 918 (1964), differences arose between them and the BLF&E about the Award's application and interpretation in a variety of situations. Strikes on account of these differences were threatened. On May 11, 1964, the court below enjoined the BLF&E from striking over any dispute about the meaning or application of the Award. *In re Certain Carriers*, 229 F. Supp. 259. In its order, the court reserved jurisdiction for any person bound by the order to apply.

"for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this order or of the judgment heretofore entered in this proceeding upon the Award by Arbitration Board No. 282, or any legal obligation resulting therefrom" (J.A. 19).

In the proceedings leading to this appeal, the BLF&E sought supplemental relief at the foot of the foregoing decree to require Southern Pacific to pay individual money claims based on alleged misapplications or violations of the Award.⁴ The claims asserted had not been handled in accordance with section 17 of the National Rules Agreement.

II. Claims Involved in This Appeal

The claims asserted by the BLF&E arose out of two kinds of alleged violations of Award 282 by appellant Southern Pacific.

A. *"Deadman Control" Claims*

Section II, Part B(5) of the Award provided "that no yard locomotive shall be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition" (J.A. 7).

Southern Pacific operates freight trains between Ennis and Dennison, Texas. Cars are switched into and out of these trains at intermediate yards in Dallas and Sherman, Texas. Sometimes the cars to be moved in these operations are so numerous and heavy that it is desirable to use powerful road locomotives for this purpose rather than ordinary switch engines. For this reason, yard crews at Dallas and Sherman sometimes "borrowed" road locomotives

⁴ In its motion, the BLF&E sought a declaration concerning the application of section 17 in general to claims based on alleged violations of the Award and to claims based on violations of other rules where the Award was involved only indirectly, as where a carrier contended that its violation of a rule embodied in a collective bargaining agreement was authorized by the Award. The specific claims against Southern Pacific alleged in the motion and accompanying affidavit were said to be only "illustrations" of the general issue. (J.A. 245, 251.) However, the District Court limited its determination to those specific claims (J.A. 325-326)—all of which involved alleged violations of the Award—and did not explicitly rule upon the application of section 17 to other claims in general or to any claim in which the Award was involved only indirectly.

to perform switching operations. After the Award became effective, road locomotives used in this manner, but not equipped with deadman controls, were operated without firemen. (J.A. 150-154, 208-211, 252-253, 278-279.)

In the latter part of 1964, the BLF&E protested appellant's failure to assign firemen to these operations. In "Time Return and Delay Reports" filed with appellant's timekeepers,⁵ the BLF&E claimed pay on behalf of individual firemen who would have been entitled to work on the assignments. Appellant, believing that its practice was justified by the Award,⁶ disallowed the claims at each level

⁵ By local agreement and practice on Southern Pacific, "the officer of the company authorized to receive" claims and grievances pursuant to section 17 of the National Rules Agreement is the timekeeper. Ordinarily, claims are first made on the employee's "Time Return and Delay Report," and disallowances are reported by means of a "Time Correction Notice" issued by the timekeeper over the signature of the Superintendent of the employees' seniority district. Examples of these documents are printed at J.A. 223-225. A claim disallowed by the timekeeper may be appealed to the Superintendent of the employee's seniority district and thence to the Manager of Personnel. A claim disallowed by the Manager of Personnel may be "docketed" for a conference between that official and the General Chairman of the labor organization involved. Thereafter, appeal lies, according to section 17, to "a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance," which, in the case of Southern Pacific, includes a special board of adjustment established by agreement with the BLF&E pursuant to § 3 Second, of the Railway Labor Act, 45 U.S.C. § 153 Second. (J.A. 174-176, 223-234.) The decisions of such special boards are final and binding. Note 11, *infra*.

⁶ Appellant relied upon the following answer (October 23, 1964) by Arbitration Board No. 282 to a question of interpretation submitted at one of the Board's reconvened sessions:

"BLF&E Question No. 61:

It is the contention of the employees that a local freight, roadswitcher, roustabout, patrol, or any road freight assignment which performs yard or industrial switching must employ a helper-fireman if the locomotive used on such assignments is not equipped with a deadman control in good operating condition. Is the contention of the employees correct?

"Answer:

No. Under Paragraph B(5) of the Award the applicable reference is to yard locomotives." (J.A. 14.)

of the grievance procedure through which they advanced (J.A. 253-254). See note 5, *supra*.

On February 11, 1965, the BLF&E filed in the District Court a motion for supplemental relief, asserting a number of claims on behalf of individual firemen for alleged violations of the Award (J.A. 20-26). Among these claims were several based on the use of road locomotives for switching at the Dallas and Sherman yards which had been presented and progressed in accordance with section 17 of the National Rules Agreement and uniformly disallowed (J.A. 21, 23-24, 151-154, 210).

In order to dispose of this issue without further contention, Southern Pacific instructed its officers not to use road locomotives in the manner in question and, on May 3, 1965, agreed to pay those claims that had been filed and appealed in the manner prescribed by section 17 (J.A. 254, 279-280, 307).

Thereafter, the BLF&E's motion for supplemental relief with respect to this class of claims was denied without prejudice by the District Court (J.A. 244).

In the week following May 3, 1965, the BLF&E filed a number of additional claims on behalf of individual firemen based on appellant's use of road locomotives for switching. More than 60 days had elapsed since the occurrences on which they were based; indeed, some of the claims were over nine months old. Southern Pacific has declined to pay these claims on the ground that they are barred by section 17 of the National Rules Agreement. (J.A. 254-255, 280-281).

B. "Orange Switcher" Claims

Section II, Parts B(1) and B(2) of the Award authorized each carrier to designate "those engine crews which, in the carrier's judgment * * * do not require the services of a fireman (helper)," and each local chairman of the

organization representing firemen then to designate up to ten per cent of such crews which "shall be required to continue to use firemen (helpers)." Thereafter, Part B(5) provided that the carrier would not be required to use firemen on crews which it had designated in this fashion and the organization had not "vetoed," except to the extent necessary to provide jobs for senior firemen who retained employment rights under Parts C and D of Section II of the Award. In order to keep the proportion of "blanked" assignments within the bounds contemplated by the Award, Part B(3) of Section II required that each carrier at three-month intervals notify the local chairmen of discontinued and newly established engine crews so that new designations could be made by each side. (J.A. 6-7.)

Certain switching operations at Orange, Texas, are conducted alternately during two-month periods by appellant Southern Pacific and The Missouri-Pacific Railroad. In March 1964, when Southern Pacific initially designated "blankable" firemen's assignments on its crews, and again in June 1964, at the expiration of the first three-month interval, specified in the Award when appellant listed newly-established assignments, the Orange switchers were being operated by Missouri-Pacific and could not be listed by Southern Pacific. On September 3, 1964, when Southern Pacific again listed newly-established firemen's assignments, Southern Pacific was operating the Orange switchers but inadvertently omitted one of them—Orange Switcher No. 2—from the list of "blanked" assignments. The carrier corrected this omission in the next trimonthly listing, and the BLF&E never subsequently "vetoed" the Orange Switcher No. 2 assignment. However, from September 3, 1964, to September 30, 1964, when the Orange switchers reverted to Missouri-Pacific operation, Southern Pacific's operation of Orange Switcher No. 2 without a fireman was

in violation of the Award (J.A. 162-163, 213-215, 256-257, 284-285.)

The BLF&E presented a number of timely claims on behalf of individual firemen arising out of the operation of the Orange Switchers (J.A. 215). Thereafter, it sought relief with respect to this situation in the motion filed in the District Court on February 11, 1965 (J.A. 21, 24, 162-163). On May 3, 1965, Southern Pacific agreed to pay all Orange Switcher No. 2 claims for September 3-30, 1964, which had been presented and appealed in compliance with section 17 of the National Rules Agreement, the BLF&E withdrew concededly invalid claims for other days, and the class of claims was subsequently withdrawn from the motion for supplemental relief (J.A. 238). A week later the BLF&E presented to the carrier a number of additional claims based on the operation of Orange Switcher No. 2 during September 3-30, 1964. Southern Pacific has refused to pay these claims on the ground that they were not initially presented or appealed after disallowance within the periods prescribed by section 17. (J.A. 257-259, 285-286.)

III. Proceedings in the District Court

On December 1, 1965, the BLF&E filed another motion for supplemental relief in the District Court, asserting 31 "deadman control" claims and 15 "Orange switcher" claims (J.A. 245-248, 254-255, 256, 258). Of these, 21 had been disallowed by appellant because they were initially presented to the timekeeper after the period prescribed by section 17 of the National Rules Agreement; three had been disallowed because they were initially presented both late and to the wrong official;⁷ 16 had been disallowed because

⁷ These three claims arose out of appellant's failure to assign a fireman to a yard locomotive at Shreveport, Louisiana, whose deadman control had

they had not been appealed within the period prescribed by section 17 after timely presentation to and disallowance by the timekeeper; and two had never been presented to any of appellant's officials in any manner before being included in the motion (J.A. 280-281, 285-286).⁸

Appellant opposed the motion on the ground that the claims were barred by the terms of the Time Limit on Claims rule. When the motion first came on for a hearing, the District Court continued the proceedings in order that the parties might obtain the interpretation of Arbitration Board No. 282 as to the applicability of the Time Limit on Claims rule to claims arising out of the Award (J.A. 318-320). The parties submitted questions to the reconvened Board and, on February 20, 1966, received the following answers:

"* * * Award 282 and interpretations issued thereunder, did not contemplate that the claims and grievances of individual employees based upon alleged violations by a carrier of employment rights that have their origin in the Award should be handled *exclusively* under procedures established by or pursuant to Section 3 of the Railway Labor Act. It was contemplated, however, that these types of claims could be so handled.

"* * * Award 282 and interpretations issued thereunder applied thereunder [sic] did not make agreements by the parties with respect to the handling of claims and grievances (such as Section 17 of the

become temporarily inoperative. Similar claims asserted in the December 1, 1965, motion for supplemental relief (J.A. 155-156) and not barred by section 17 had been paid by appellant in order to dispose of the matter without further contention (J.A. 256, 282-283).

⁸ The four claims not accounted for above had been presented and appealed in compliance with section 17. Appellant discovered this fact on re-checking its records, and these claims were subsequently paid. (J.A. 285 n. 3.) Thus, only 11 "Orange switcher" claims remain at issue.

Agreement of August 11, 1948) inapplicable to individual claims and grievances based upon alleged violations of the Award. On the other hand, for the reasons set forth above, the Award neither contemplated nor provided that Section 17 or similar provisions in other agreements should be applicable to such claims or grievances, or that they should be the exclusive remedies available. * * *

“* * * The Board does not take the view that it has jurisdiction to prescribe mandatory or exclusive procedures for remedying violations or misapplications of its Award. Previous references to such remedies in interpretations issued by the reconvened Board have been advisory only.” (J.A. 14-17.)

Thereafter, additional argument was heard by the court and an oral opinion delivered on March 28, 1966, in which the court ruled:

“The question before the Court is not whether the claimants have a right to resort to the grievance procedure. The question is whether they are obligated to do so.

“The Court is of the opinion that the prior agreement may not oust the court of jurisdiction to determine a claim arising subsequently.

“It is quite clear that the parties could not have had in contemplation the possibility of a compulsory arbitration sometime in the future terminating in a judgment of the court and could not have intended to provide that if there should be any claims arising under an unanticipated award or the judgment, the grievance procedure should be exclusively applicable.

“The Court is of the opinion, therefore, that a claimant—and when I say a claimant, I mean the

claimants involved in this motion—may resort either to the grievance procedure prescribed by Section 17 or may apply to the Court to enforce the judgment of this Court.” (J.A. 322-323.)⁹

On April 6, 1966, the court entered an order implementing its ruling which:

“DECLARED AND DECREED, that claims or grievances of the Brotherhood of Locomotive Firemen and Enginemen and the firemen (helpers) it represents, referred to in the motion, based on alleged violations or misapplications of Award of Arbitration Board No. 282, on which Award judgment was entered by this Court on February 28, 1964, are not subject to the compulsory grievance procedure established by section 17 of a certain collective agreement entered into on August 11, 1948 by the Brotherhood of Locomotive Firemen and Enginemen and other labor unions on the one hand and on the other hand by the Southern Pacific Company and numerous other carriers; and such claims or grievances, if otherwise valid, may be enforced without the Brotherhood or the employees it represents first resorting to the procedure established by section 17 of the said 1948 agreement.” (J.A. 329.)

Appellant moved to amend the foregoing order so as to distinguish between those claims as to which the BLF&E had not “first resort[ed]” to the procedures of section 17 (they would be enforceable in court according to the terms of the order) and those claims as to which the BLF&E had “first resort[ed]” to the procedures of section 17 (they would be subject to the terms of section 17 and barred if

⁹ The opinion of the District Court granting the motion for supplemental relief is reported as *In re Certain Carriers*, 253 F. Supp. 532.

not timely appealed after disallowance) (J.A. 334-336). The motion was denied on June 2, 1966 (J.A. 338-341, 342).¹⁰

This appeal followed (J.A. 343).

Statutes Involved

We set forth in the Appendix to this brief the statutory provisions involved in this appeal.

Statement of Points

1. The District Court erred in holding that it was competent to construe section 17 of the National Rules Agreement, a collective bargaining agreement between parties subject to the Railway Labor Act, since the interpretation of railway collective bargaining agreements is by law committed exclusively to specialized tribunals established or authorized by section 3 of the Railway Labor Act, and the parties had created such a tribunal and had agreed to refer to that tribunal all disputes over the interpretation or application of the National Rules Agreement.

2. The District Court erred in holding that section 17 of the National Rules Agreement does not apply to individual claims arising out of alleged violations of the Award by Arbitration Board No. 282 so as to exclude other remedies.

3. The District Court erred in holding that individual claims arising out of alleged violations of the Award by Arbitration Board No. 282 are not barred by the claimants' having failed to resort to the procedures prescribed by section 17 of the National Rules Agreement.

4. The District Court erred in holding that individual claims arising out of alleged violations of the Award by Arbitration Board No. 282 are not subject exclusively to the

¹⁰ The opinion of the District Court denying the motion to amend the order is reported as *In re Certain Carriers*, 255 F. Supp. 290.

procedures prescribed by section 3 of the Railway Labor Act for handling "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions."

5. The District Court erred in holding that adjudication by the District Court of individual claims arising out of alleged violations of the Award by Arbitration Board No. 282 is necessary to the enforcement of the District Court's judgment on the Award.

6. The District Court erred in declaring judicially enforceable those claims arising out of alleged violations of the Award by Arbitration Board No. 282 which had been initially handled pursuant to procedures prescribed by section 17 of the National Rules Agreement, denied on the merits, and not appealed in accordance with the provisions of section 17, which provides that claims which are denied but not appealed shall be barred.

Summary of Argument

The basic issue in this case is whether Congress, by enacting Public Law 88-108 in order to conclude a troublesome "major" dispute, unwittingly changed the rules for handling many of the "minor" disputes arising out of the same subject matter. Section 3 of the Railway Labor Act—the "minor" dispute section—provides that disputes "growing out of grievances" or "out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions" shall be "handled in the usual manner," *i.e.*, under grievance procedures established by agreement between the parties, and thereafter (if not resolved) appealed to one of the adjustment boards established pursuant to the Act. Adjustment board decisions of such dis-

putes are "final and binding." The jurisdiction conferred by section 3 upon contract grievance procedures and upon the railroad adjustment boards is exclusive, and the courts have no power to adjudicate "minor" disputes between parties subject to the Railway Labor Act.

Claims by individual railroad employees based on violations of prevailing work rules are "minor" disputes within the purview of section 3, whether the rules involved were established by agreement, by permissible unilateral action of the carrier, by voluntary arbitration under the Act, or by compulsory arbitration under Public Law 88-108. The source of the work rule in question makes no difference. The purposes of section 3 are fulfilled if the claim arises out of the employment relationship. The District Court has recognized that claims arising out of alleged violations of Award 282 are "minor" disputes, but in this case it refused to acknowledge that it had no jurisdiction of such claims. Therein the court erred.

Disputes over the interpretation of agreements, like claims for violations of work rules, are subject to the exclusive jurisdiction of the agencies of section 3 of the Act. No court has jurisdiction to interpret a railway collective bargaining agreement. When it undertook to interpret section 17 of the Railway Labor Act as not applicable to claims arising out of alleged violations of Award 282, the court exceeded its power.

Furthermore, the court's interpretation was in error. Though the parties in 1948 could not have anticipated Award 282, as such, they certainly could have anticipated voluntary arbitration under the Railway Labor Act, and Award 282 does not differ from voluntary arbitration in any way that significantly affects the proper handling of claims. The significant fact is that section 17 was broadly drafted in an apparent effort to cover the entire range of

potential complaints growing out of the relations between the carriers and their employees. Moreover, the policy of federal labor law, repeatedly enunciated by the Supreme Court, dictates a broad construction of section 17 which would include claims based on Award 282.

Award 282 itself did not impose on the parties any particular procedure for the determination of claims based on the Award. The judgment on the Award does no more than declare the Award valid. It cannot impose any additional substantive requirements on the parties. Consequently, the District Court erred when it held that judicial determination of individual claims under the Award—a subject not covered by the Award—was necessary to the enforcement of the judgment on the Award.

Appellee sought certain definite advantages by filing some of the claims involved in this appeal under the procedure established by section 17. When those claims were denied on the merits, appellee was obliged by the terms of section 17 either to appeal the claims within the time limits specified or to suffer their being barred. Having chosen to avail itself of the benefits of section 17—whether or not section 17 would have been applicable by its own force—appellee should not be permitted to evade the conditions of section 17. The claims that were timely filed, denied on the merits and not appealed should be held barred according to the terms of section 17.

ARGUMENT

- I. Individual claims arising out of alleged violations of Award 282 are "minor" disputes, subject exclusively to the procedures of § 3 of the Railway Labor Act, and the District Court had no jurisdiction to adjudicate the enforceability of such claims.

In order "to avoid any interruption to commerce" by minimizing the frictions that cause strikes, section 2 of the Railway Labor Act, 45 U.S.C. §§ 151a, 152, requires that all carriers subject to the Act and all organizations representing their employees "exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise." 45 U.S.C. § 152 First. At the heart of the Railway Labor Act are detailed provisions for resolving disputes over the making and changing of such agreements—the so-called "major" disputes—and disputes growing out of grievances or out of the interpretation or application of such agreements—the so-called "minor" disputes. In the case of "major" disputes, sections 2 Seventh, 5, 6, and 10 of the Act, prescribe an orderly and often time-consuming sequence of bargaining, mediation, and other procedures, 45 U.S.C. §§ 152, 155, 156, 160, which must be exhausted before agreements with respect to rates of pay, rules, or working conditions may be changed unilaterally and before strikes over such changes are permissible. In the case of "minor" disputes, section 3 of the Act, 45 U.S.C. § 153, recognizes and sanctions customary or contractual procedures for the adjustment of disputes over grievances or over the interpretation of existing agreements, but provides that those disputes that remain unresolved by these procedures may be submitted by either party for final and

binding determination by the National Railroad Adjustment Board established by the Act or by special boards of adjustment authorized by the Act.¹¹ See *Elgin, J. & E. Ry. v. Burley*, 325 U.S. 711, 720-728 (1945), *opinion adhered to*, 327 U.S. 661 (1946).

Public Law 88-108, 77 Stat. 132 (1963), pursuant to which the Award of Arbitration Board No. 282 was made, was enacted on account of the apparent failure of the Railway Labor Act to prevent a nationwide rail strike over a "major" dispute.¹² By incorporating several provisions of the Railway Labor Act into Public Law 88-108, Congress clearly provided for the settlement of disputes over the interpretation of the Award according to the "time-tested provisions of the Railway Labor Act."¹³ But Congress

¹¹ Section 3 Second, as amended on June 20, 1966, provides that a union or carrier may require the establishment of a special board of adjustment under certain circumstances to hear disputes in place of the National Railroad Adjustment Board. The awards of such special boards are "final and binding" and "enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the [National Railroad] Adjustment Board," see p. 21-22, *infra*. Public Law 89-456, § 1, 80 Stat. 208. In addition, section 3 Second continues to provide for the establishment by agreement of "system, group, or regional boards of adjustment" whose jurisdiction equals and supplants that of the national board, see *United Railroad Operating Crafts v. Pennsylvania R.R.*, 212 F.2d 938, 940, 941 (7th Cir. 1954); *Atlantic Coast Line R. Co. v. Pope*, 119 F.2d 39 (4th Cir. 1941).

¹² See, e.g., H.R. Rep. No. 713, 88th Cong. 1st Sess. (1963) 3-5; *Brotherhood of Locomotive Firemen & Enginemen v. Chicago, B. & Q.R.R.*, 225 F. Supp. 11, 15 (D.D.C.), *aff'd*, 118 U.S. App. D.C. 100, 331 F.2d 1020, *cert. denied*, 377 U.S. 918 (1964).

¹³ S. Rep. No. 459, 88th Cong. 1st Sess. (1963) 3. Section 4 of Public Law 88-108 provided that "the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act" to the extent not inconsistent with Public Law 88-108. Section 7 Third (c) of the Railway Labor Act, 45 U.S.C. § 157 Third (c), provides that an arbitration board may be reconvened by the National Mediation Board, upon the request of either party to the arbitration, "to pass upon any controversy over the meaning or application of their award," and that the board's rulings shall be acknowledged and filed in the same manner "as the original award and

did not expressly prescribe—nor is there any evidence in the legislative history that it even considered—particular procedures for determining claims by individual employees arising out of alleged violations of the Award. The issue in this case, in its broadest aspect, is whether Congress, by enacting Public Law 88-108 in order to conclude a troublesome “major” dispute, unwittingly changed the rules for handling many of the “minor” disputes arising out of the same subject matter.

Section 3 First (i) of the Railway Labor Act—the core of the “minor” disputes section—provides as follows:

“The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * * shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the [National Railroad] Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.”

Section 3 First (m) provides that adjustment board awards “shall be final and binding upon both parties to the dis-

become a part thereof.” Board 282 has reconvened on numerous occasions and its interpretations have been accorded conclusive weight. See *Brotherhood of Railroad Trainmen v. Certain Carriers, Etc.*, 121 U.S. App. D.C. 230, 233, 349 F. 2d 207, 210 (1965); *Brotherhood of Railroad Trainmen v. Chicago, M. St. P. & P.R.R.*, 120 U.S. App. D.C. 293, 297, 345 F. 2d 985, 987 (1965); *Brotherhood of Railroad Trainmen v. St. Louis S.W. Ry.*, 252 F. Supp. 961 (D.D.C. 1966), *appeals pending*, Nos. 20,212, 20,213; *In re Certain Carriers*, 248 F. Supp. 1008, 1009-1010 (D.D.C. 1966), *appeals pending*, Nos. 20,003, 20,004.

pute." Public Law 89-456, §2(a), *supra* note 11.¹⁴ Section 3 First (p) provides that adjustment board awards may be enforced by a proceeding in the appropriate United States District Court. In such a proceeding, the adjustment board's decision is "conclusive on the parties," and may be reviewed only for failure of the board to comply with the Act, for failure of the award to confine itself to matters within the division's jurisdiction, or for fraud or corruption by a member of the board. Public Law 89-456, §2(c)-(e), *supra* note 11.¹⁵

These provisions, the Supreme Court has said, constitute "a mandatory, exclusive, and comprehensive system for resolving grievance disputes." *Brotherhood of Locomotive Engineers v. Louisville & N.R.R.*, 373 U.S. 33, 38 (1963). The jurisdiction which they vest in customary or contractual grievance procedures and, ultimately, in the adjustment boards, is exclusive. No court has jurisdiction to decide disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions of railroad employees. *Pennsylvania R.R. v. Day*, 360 U.S. 548 (1959); *Order of Railway Conductors v. Southern R.R.*, 339 U.S. 255 (1950); *Slocum v. Delaware, L. & W.R.R.*, 339 U.S. 239 (1950); *Order of Railway Conductors v. Pitney*, 326 U.S. 561 (1946).

¹⁴ Before being amended on June 20, 1966, the quoted language was followed by "except insofar as they shall contain a money award." See *Gunther v. San Diego & A.E. Ry.*, 382 U.S. 257 (1965).

¹⁵ Under section 3 First before it was amended on June 20, 1966, see 45 U.S.C. § 153 First, the board's award was "prima facie evidence of the facts therein stated." Even under this language, the Supreme Court held that the adjustment board's decision of the merits of a grievance could not be reviewed (unless, perhaps, it was "wholly baseless and completely without reason"), the court's power being limited to a review of "the size of the money award," see note 14, *supra*, and enforcement of the award. See *Gunther v. San Diego & A.E. Ry.*, *supra* note 14, 382 U.S. at 261, 264.

The Railway Labor Act contemplates that rates of pay, rules and working conditions of railroad employees normally will be established and changed by agreement between carriers and the representatives of their employees. See p. 19, *supra*. However, the Act also recognizes that rates of pay, rules, and working conditions may be established or changed by other means. In the absence of an agreement to begin with, the rates of pay, rules, and working conditions are those which the carrier unilaterally establishes. See *Order of Railway Conductors v. Pitney*, *supra*, 326 U.S. at 565; *Ramsey v. Chesapeake & O.R. Co.*, 75 F. Supp. 740 (N.D. Ohio 1948). And even where an agreement exists, a carrier is privileged to change unilaterally the rates of pay, rules, and working conditions established thereby, provided it first exhausts the "major" disputes procedures prescribed by the Act. *Brotherhood of Locomotive Engineers v. Baltimore & O.R.R.*, 372 U.S. 284 (1963). But before such unilateral action is taken, the Act encourages the submission of proposed changes in rates of pay, rules, and working conditions to voluntary arbitration.¹⁶ Thus, the Railway Labor Act contemplates that rates of pay, rules, and working conditions *may* be established by agreement, by unilateral imposition, or by arbitration.

Clearly, the provisions of section 3 of the Act were written, and they have been interpreted, to cover all disputes growing out of alleged breaches of prevailing work rules, regardless of whether the particular rule involved

¹⁶ Section 7 of the Act, 45 U.S.C. § 157, provides for arbitration of "controversy" between carriers and their employees. Section 5 First, 45 U.S.C. § 155 First, directs the National Mediation Board to "endeavor as its final required action * * * to induce the parties to submit their controversy to arbitration" if efforts "to bring about an amicable settlement through mediation shall be unsuccessful." The Mediation Board's jurisdiction includes, of course, disputes "concerning changes in rates of pay, rules, or working conditions." *Ibid*.

was established by agreement, by unilateral imposition, or by an arbitration award pursuant to section 7 of the Act. Thus, section 3 First (i) expressly includes disputes "growing out of grievances" as well as disputes "growing * * * out of the interpretation or application of agreements." And the Supreme Court has said that the purpose of section 3 "is fulfilled if the claim itself *arises out of the employment relationship* which Congress regulated." *Pennsylvania R.R. v. Day, supra*, 360 U.S. at 552. (Emphasis added.) Accordingly, claims of railroad employees based on work rules which do not emanate from collective bargaining agreements have been held nonetheless to be "minor" disputes within the purview of section 3. *Missouri-K.T.R.R. v. Brotherhood of Railroad Trainmen*, 342 F.2d 298, 300 (5th Cir. 1965); *Ramsey v. Chesapeake & O.R. Co., supra*. And the National Railroad Adjustment Board has held that it has jurisdiction under section 3 of claims arising out of alleged violations of arbitration awards made under section 7. NRAB Award No. 13314 (Docket No. TE 12430, Feb. 25, 1965).

The terms upon which the arbitration pursuant to Public Law 88-108 was held did not differ significantly from those of a voluntary arbitration pursuant to section 7 of the Railway Labor Act. The legislative history records that in August of 1963, while Congress was considering the proper response to the threat of a nationwide rail strike, the parties to the national work rules dispute negotiated and reached an agreement "in principle" to submit the firemen and crew consist issues to arbitration under section 7 of the Act. In response to this turn of events, Congress abandoned the Administration's proposal to submit the issues involved to the Interstate Commerce Commission for interim rulemaking pending further collective bargaining and turned instead to the "time-tested provisions of

the Railway Labor Act." By its own profession, Congress, in enacting Public Law 88-108, did little more than "resolve" the "purely procedural dispute" that stood in the way of an agreement to arbitrate and provide a "statutory framework for arbitration, as already agreed to in principle by the parties." H.R. Rep. No. 713, *supra*, at 12-13. That "statutory framework" bears a marked resemblance to an agreement to arbitrate under section 7 of the Act: the operative provisions of Public Law 88-108 specify all the conditions which section 8 of the Act requires for an arbitration agreement under the Act.

The work rules established by Award 282 do not differ in either form or substance from those which might have been made by agreement among the parties or by a voluntary arbitration under section 7 of the Act. Congress directed the Board to decide the disposition of the outstanding section 6 notices—notice whose sole function under the Railway Labor Act is to propose changes in *agreements*. Public Law 88-108, §3; Railway Labor Act, §6, 45 U.S.C. §156. And the Board declared in its Award that "all *agreements* * * * with respect to the employment of firemen (helpers) shall continue undisturbed except as *modified* by the terms of this Award" (J.A. 5). (Emphasis added.) Section 3 of Public Law 88-108 expressly directed the Board to "incorporate" in its decision "any matters on which it finds the parties were in agreement, * * * resolve the matters on which the parties were not in agreement, and * * * give due consideration to those matters on which the parties were in tentative agreement." The rules established by the Award, like those established by agreement, have been held to continue in effect until changed in accordance with the provisions of the Railway Labor Act. *Akron & B.B.R.R. v. Brotherhood of Railroad Trainmen*, 250 F. Supp. 691 (D.D.C. 1966), *appeals pending*, Nos. 20,152,

20,173; *Bangor & A.R.R. v. Brotherhood of Locomotive Firemen & Enginemen*, 253 F. Supp. 682 (D.D.C. 1966), *appeals pending*, Nos. 20,192, 20,193, 20,215, 20,216. In short, the Award took the place and performed the office of the agreement which the parties might have made if they had been able to compose their differences by collective bargaining. See *Akron & B.B.R.R. v. Brotherhood of Railroad Trainmen*, *supra*, 250 F. Supp. at 697.

The rules established by Award 282 are written in the same language and employ the same concepts as a railway collective bargaining agreement. The determination of individual claims under the Award may involve the interpretation and application of rules in addition to those established by the Award, such as rules respecting seniority to identify the particular employee who was entitled to a particular run at a particular time; rules with respect to distance, time, and engine size to determine the amount of an employee's pay for a particular assignment; and so forth. Some or all of these may require that collective bargaining agreements be construed and applied to concrete situations. Thus, the final determination of an individual fireman's claim for a day's pay on account of an alleged violation of Award 282 may involve much more than a finding that a rule established by the Award was violated by the carrier. *Cf. Ficek v. Southern Pacific Co.*, 338 F.2d 655, 657 (9th Cir. 1964), *cert. denied*, 380 U.S. 988 (1965).

In view of the foregoing, individual claims for violations of Award 282 are not significantly different from the kinds of claims which are the "grist" of the "minor" disputes procedure of section 3 of the Railway Labor Act. *Union Pacific R.R. v. Price*, 360 U.S. 601, 616 (1959). The same knowledge and experience must be brought to bear upon the determination of such a claim. See *Gunther v. San*

Diego & A. E. Ry., 382 U.S. 257, 261 (1965). There is the same need for uniformity in the disposition of similar claims lest "a class of preferred claimants" be created. See *Pennsylvania R.R. v. Day*, *supra*, 360 U.S. at 552; *Slocum v. Delaware, L. & W.R.R.*, *supra*, 339 U.S. at 243. In short, the same reasons that support the Supreme Court's holdings that the agencies created by section 3 of the Act have exclusive jurisdiction over claims and grievances based strictly on collective bargaining agreements also negative the District Court's asserted jurisdiction to determine claims based on the rules established by Award 282.

The District Court's error in this case lies not so much in its failure to acknowledge that individual claims arising out of alleged violations of Award 282 are "minor" disputes within the purview of section 3 of the Railway Labor Act—indeed, the Court has expressed that very idea in other proceedings, see *In re Certain Carriers*, 240 F. Supp. 290, 291, and 241 F. Supp. 1004, 1006 (D.D.C. 1965)—as in its refusal to acknowledge that if such claims are subject to section 3 then the Court has no jurisdiction with respect to them. The District Court's error in this regard stems from its overly broad reading of the old case of *Moore v. Illinois Central R.R.*, 312 U.S. 630 (1941). In *Moore*, a former railroad employee sued the railroad for breach of contract in that he was discharged in violation of the terms of the collective bargaining agreement under which he was employed. The action was brought in federal court under the diversity jurisdiction. The plaintiff took judgment and the Court of Appeals reversed on a point involving the state statute of limitations. The Supreme Court reversed the Court of Appeals on this issue, and in so doing also rejected the railroad's contention that Moore had brought his action prematurely by failing first to seek redress through the

channels of section 3 of the Railway Labor Act. "[T]he legislative history of the Railway Labor Act," the Court said, "shows a consistent purpose on the part of Congress to establish and maintain a system for peaceful adjustment and mediation voluntary in its nature," not a machinery "based on a philosophy of legal compulsion." *Id.* at 635-636. Accordingly, the court found "nothing in that Act which purports to take away from the courts the jurisdiction to determine a controversy over a wrongful discharge or to make an administrative finding a prerequisite to filing a suit in court." *Id.* at 634. The court below, citing *Moore* alone, said:

"[T]he Supreme Court has held that the mere fact that there is an administrative remedy in existence in respect to a grievance of an employee of a railroad company does not bar his resort to the courts." (J.A. 322.)

It is submitted with respect that this statement ignores twenty-five years of Supreme Court jurisprudence and seriously misinterprets the present state of the law. *Moore* was based on the premise that proceedings under section 3 are "conciliatory" in character, a premise which the Court has since emphatically rejected. *Elgin, J. & E. Ry. v. Burley*, *supra*, 325 U.S. at 720-721; see *Union Pacific R.R. v. Price*, *supra*, 360 U.S. at 609-614; cf. *Gunther v. San Diego & A.E. Ry.*, *supra*, 382 U.S. at 263-264; *Brotherhood of Locomotive Engineers v. Louisville & N.R.R.*, *supra*, 373 U.S. at 40 (describing the "minor" disputes procedure as "compulsory arbitration"). *Moore* has been held to apply only to cases where the employee has been discharged, "accepts his discharge as final," and sues for wrongful discharge. It does not give courts power to adjudicate the claims and grievances of incumbent employees. *Pennsyl-*

vania R.R. v. Day, *supra*, 360 U.S. at 553-554; *Slocum v. Delaware, L. & W.R.R.*, *supra*, 339 U.S. at 242-244; *Hundley v. Illinois Central R.R.*, 272 F.2d 752 (6th Cir. 1959); *Majors v. Thompson*, 235 F.2d 449 (5th Cir. 1956). A *Moore* kind of action for wrongful discharge is necessarily based on the state law of contracts, subject to whatever conditions precedent (such as exhaustion of contract grievance procedures) state law may erect. *Transcontinental & Western Air, Inc. v. Koppal*, 345 U.S. 653 (1953); *Stack v. New York Central R.R.*, 258 F.2d 739 (2d Cir. 1958); *Smithey v. St. Louis S.W. Ry.*, 237 F.2d 637 (8th Cir. 1956). The *Moore* exception does not apply where the cause of action is federal, because "federal labor policy requires that individual employees wishing to assert contract grievances must attempt use of the contract grievance procedure agreed upon by employer and union as the mode of redress." *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652 (1965).

None of the conditions which today might permit an aggrieved railroad employee to maintain a civil action for wrongful discharge *à la Moore* applies to the claims involved in the instant case. All of the claims arose during the active employment of the claimants and all of the claimants were employed by the carrier when their claims were filed. (So far as the record shows, they are still so employed.) Moreover, whatever may be the status of railway collective bargaining agreements *vis à vis* state law,¹⁷ claims based upon the Award of Arbitration Board No. 282 clearly arise under federal law and are subject to federal labor policy.

In short, if *Moore* is still good law, it has been limited to

¹⁷ Compare *Transcontinental & Western Air, Inc. v. Koppal*, *supra*, with *International Ass'n of Machinists v. Central Airlines, Inc.*, 372 U.S. 682 (1963).

such an extent that it can no longer be said that there is any area in which the adjustment boards and the courts exercise concurrent jurisdiction. As the Supreme Court said in *Pennsylvania R.R. v. Day, supra*, once it had been demonstrated that the claim there involved was subject to section 3: "Since the Board has jurisdiction, it must have exclusive primary jurisdiction." 360 U.S. at 552.

Finally, the Supreme Court's recent decision in *Republic Steel Corp. v. Maddox, supra*, casts so much doubt upon the premises of *Moore* that at least one Court of Appeals has held that *Moore* has been effectively overruled. The Supreme Court has agreed to review that decision. *Walker v. Southern Ry.*, 354 F. 2d 950 (4th Cir. 1965), *cert. granted*, 384 U.S. 926 (May 2, 1966, No. 1129, renumbered No. 89, O.T. 1966).

As we have shown, claims arising out of alleged violations of the Award of Arbitration Board No. 282 are "minor" disputes within the purview of section 3 of the Railway Labor Act. It follows that the District Court had no jurisdiction to entertain appellee's motion for supplemental relief in which such claims were asserted.

II. The District Court erred in holding that section 17 of the National Rules Agreement does not apply to claims arising out of alleged violations of Award 282 so as to bar other remedies.

Before a "minor" dispute may be referred to the National Railroad Adjustment Board, section 3 First (i) of the Act requires that it be "handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." See p. 20, *supra*. In the case of Southern Pacific and numerous other carriers, the "usual manner" for handling minor disputes is that prescribed by section 17 of the National Rules Agreement.

Among other things, section 17 specifies with whom claims or grievances should initially be filed, to whom denials must be appealed, and the time periods within which claims must be filed and appeals from denials taken. See Notes 2, 5, *supra*. In one respect or another, none of the claims involved in this appeal was "handled" in accordance with the provisions of section 17, and for this reason the carrier has refused to pay them.

On its face, section 17 of the National Rules Agreement applies to "all claims or grievances." In its opinion, the District Court said:

"To be sure, if this language is construed literally, the claims here presented would be subject to the provisions of Section 17 and the remedy provided by Section 17 would be exclusive." (J.A. 322.)

However, the court went on to hold:

"It is quite clear that the parties could not have had in contemplation the possibility of a compulsory arbitration sometime in the future terminating in a judgment of the court and could not have intended to provide that if there should be any claims arising under an unanticipated award or the judgment, the grievance procedure should be exclusively applicable." (J.A. 323.)

This part of the District Court's opinion is erroneous for two reasons: it assumes incorrectly that the District Court had power to interpret the National Rules Agreement, and it misinterprets the National Rules Agreement in any event in that it ignores the plain meaning of section 17, misapprehends the probable intention of the parties, and violates the policy of federal railway labor law to encourage voluntary arrangements for the final and binding adjust-

ment of disputes. We shall deal with each of these objections in order.

A. *The dispute over the application of the National Rules Agreement is a "minor" dispute, subject exclusively to the procedures of § 3 of the Railway Labor Act, and the District Court had no jurisdiction to construe the National Rules Agreement.*

As we pointed out above, section 3 of the Railway Labor Act applies both to disputes "growing out of grievances" and to disputes growing "out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions." The administrative remedy provided by section 3 is "mandatory, exclusive, and comprehensive." See p. 22, *supra*. In keeping with these principles, it is clear that no court has jurisdiction to interpret a disputed provision of a railway collective bargaining agreement. *Slocum v. Delaware, L. & W.R.R.*, 339 U.S. 239 (1950); *Order of Railway Conductors v. Pitney*, 326 U.S. 561 (1946); *Aaxico Airlines, Inc. v. Air Lines Pilots Ass'n*, 331 F.2d 433 (5th Cir.), *cert. denied*, 379 U.S. 933 (1964); *St. Louis, S.F. & T. Ry. v. Railroad Yardmasters*, 328 F.2d 749 (5th Cir.), *cert. denied*, 377 U.S. 980 (1964); *United Railroad Operating Crafts v. Pennsylvania R.R.*, 212 F.2d 938 (7th Cir. 1954); *Switchmen's Union v. Ogden U. Ry. & Depot Co.*, 209 F.2d 419 (10th Cir. 1954).

Judicial authority to construe railway collective bargaining agreements is utterly lacking regardless of whether the contractual dispute arises from the claim for relief itself (as where the complaint states a cause of action based on an alleged breach of the agreement, see *Aaxico Airlines, Inc. v. Air Lines Pilots Ass'n*, *supra*) or whether the dispute arises only from the nature of the defense (as where the terms of the agreement are pleaded in defense to a claim

based on a statutory right, see *Order of Railway Conductors v. Pitney*, *supra*; *Westchester Lodge 2186 v. Railway Express Agency, Inc.* 329 F.2d 748, 751-752 (2d Cir. 1964); *St. Louis, S.F. & T. Ry. v. Railroad Yardmasters*, *supra*). In either case, the court, being without power to construe the agreement, cannot decide the case on the merits. It must either dismiss the complaint or stay the proceedings pending a resolution of the dispute in accordance with the procedures prescribed for this purpose by the Railway Labor Act. Cf. *Flight Engineers' Int'l Ass'n v. American Airlines, Inc.*, 303 F.2d 5 (5th Cir. 1962), *appeal dismissed per stipulation*, 314 F.2d 500 (5th Cir. 1963).

Thus, in *Order of Railway Conductors v. Pitney*, *supra*, a railroad agreed with the trainmen's union that certain jobs would thereafter be assigned to employees represented by that union. The conductors' union immediately brought suit in the reorganization court having control over the railroad's affairs, contending that the jobs in question belonged to employees represented by the conductors' union, and that the railroad's award of jobs to employees represented by the trainmen's union violated the "major" disputes provisions of the Railway Labor Act. The trustees answered that the conductors' right to the jobs in question was not established by agreement but only by a customary practice not protected by the Act against unilateral change. (Only unilateral changes of "working conditions * * * embodied in agreements" are expressly prohibited by sections 2 Seventh and 6). This answer, the Supreme Court said,

"put in issue the meaning of the contracts that allegedly embodied the working conditions which the trustees were about to change. The court, therefore, had to interpret these contracts before it could find that § 6 had been violated." 326 U.S. at 565.

This, the Supreme Court said, the lower court could not do. "Congress has specifically provided for a tribunal to interpret contracts such as these in order finally to settle a labor dispute." *Ibid.* Although the reorganization court had power to instruct its trustees, it "should not have interpreted the contracts for purposes of finally adjudicating the dispute between the unions and the railroad." *Id.* at 567-568.

So in the case at bar, when appellants responded to the motion for supplemental relief by contending that the claims asserted were barred by section 17 of the National Rules Agreement, the District Court was confronted with a dispute over the interpretation or application of that collective bargaining agreement—a dispute which the court had no jurisdiction to resolve.

In this case, jurisdiction to interpret the National Rules Agreement lies in the Joint Committee established by the supplementary Memorandum Agreement among the parties to the National Rules Agreement. See p. 4, *supra*. Section 3 Second of the Act authorizes the establishment of such boards of special jurisdiction, see note 11, *supra*, and the National Railroad Adjustment Board has expressly recognized the primary jurisdiction of the Joint Committee: in a resolution adopted July 1, 1952, the NRAB declared that "any case in which the application of the provisions of the National Rules Agreement * * * is a question at issue * * * will be held in abeyance until the issue involving the application of the National Rules Agreement has been disposed of by the Joint Committee * * *." (J.A. 293-296.)

With reference to the Memorandum Agreement, it should be pointed out that familiar principles of contract law—quite apart from the special doctrines relating to railway labor law—should have restrained the court from interpreting the National Rules Agreement. The Memorandum

Agreement binds the parties to refer "any dispute or controversy * * * as to interpretation or application of any of the terms of the [National] Rules Agreement" to the Joint Committee for a "final and binding" decision. (J.A. 288.)

"[That] the intention of parties to submit their contractual disputes to final determination outside the courts should be made manifest by plain language * * * does not mean that hostility to such provisions can justify blindness to a plain intent of parties to adopt this method for settlement of their disputes. Nor should such an agreement of parties be frustrated by judicial 'interpretation' of contracts. If parties competent to decide for themselves are to be deprived of the privilege of making such anticipatory provisions for settlement of disputes, this deprivation should come from the legislative branch of government." *United States v. Moorman*, 338 U.S. 457, 462 (1950).

It can hardly be said that Congress has forbidden railway labor and management to make binding arrangements for settling future disputes. On the contrary, the Railway Labor Act encourages such arrangements.

For the foregoing reasons, it is plain that the District Court had no authority to nullify the parties' Memorandum Agreement and substitute itself for the tribunal to which the parties had committed themselves and to which the Railway Labor Act gives exclusive jurisdiction.

B. The correct interpretation of section 17 is that it applies to claims arising out of alleged violations of Award 282 so as to exclude other remedies and bar claims which are not made within the time limits prescribed.

The stated reason for the District Court's refusal to give effect to the plain meaning of section 17 of the National Rules Agreement was that the parties who entered that agreement in 1948 "could not have had in contemplation the possibility of a compulsory arbitration sometime in the future terminating in the judgment of the court" or have intended that section 17 "should be exclusively applicable" to claims arising out of such "an unanticipated award or the judgment." (J.A. 322-323.) Even assuming that the court had power to construe the National Rules Agreement, its interpretation based upon the above-described reasoning cannot withstand analysis.

Since long before the National Rules Agreement was made, the Railway Labor Act has encouraged voluntary arbitration of otherwise insoluble "major" disputes. The Act contemplates—and the parties to the National Rules Agreement cannot be presumed to have been ignorant of the fact—that rates of pay, rules, and working conditions may sometimes be established by arbitration rather than by agreement. See pp. 23-24, *supra*. If the scope of the National Rules Agreement depends on the parties' anticipations, then surely claims for violations of "voluntary" arbitration awards would be subject to section 17.

The arbitration held pursuant to Public Law 88-108 differed from voluntary arbitration under section 7 of the Railway Labor Act insofar as the submission of the dispute was compulsory and not by agreement. (Even this difference is muted by the fact that the parties had already agreed "in principle" to arbitration of the firemen and crew consist issues and Congress expressly directed the Arbitration

Board to incorporate in its Award those matters on which the parties were in agreement. See pp. 24-25, *supra*.) But the compulsion which distinguishes the submission of issues to Board 282 does not serve to distinguish significantly the character of the award of that Board or the nature of individual claims arising thereunder. A "voluntary" arbitration award would have been no less binding. It would have been open to interpretation by the same procedures. It would have continued in effect until modified in the same manner. The judgment entered on such an award would have been identical to the judgment entered on Award 282. The facts on which individual claims might have been based and the requirements for determining such claims would have been similar. In all of their essential characteristics, claims under Award 282 are similar to the kinds of claims for which the parties to the National Rules Agreement attempted to make provision.

Even if it were true that the parties to the National Rules Agreement could not in fact have anticipated claims arising out of a compulsory arbitration award and judgment, that would not be a sufficient reason for holding that such claims are not subject to section 17 of the agreement. The significant fact is that section 17 was broadly drafted in an apparent effort to cover the entire range of potential complaints growing out of the relations between the carriers and their employees. "Whenever the language originated, it still states the existing agreement of the parties and should govern the situations which come within it." *Donahue v. Susquehanna Collieries Co.*, 138 F.2d 3, 6 (3d Cir. 1943) (holding claims under Fair Labor Standards Act (1938) subject to grievance arbitration clause adopted in 1903). The Supreme Court has repeatedly emphasized that collective bargaining agreements—the "charters of industrial self-government"—should not be construed narrowly like ordinary commercial contracts, *Gunther v. San Diego*

& *A.E.Ry.*, 382 U.S. 257, 261 (1965), but should be construed broadly in order to encourage settlement of claims and grievances according to the procedures which the parties have adopted: grievance arbitration "is the means of solving the unforeseeable." *United Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 580, 581 (1960). Illustrative of the Supreme Court's attitude in this area is its decision in *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 554 (1964), in which the Court held subject to the grievance procedure of a collective bargaining agreement a situation which the Court acknowledged "in all probability * * * was one not expressly contemplated * * * when the agreement was made." The policy of federal labor law, as interpreted by the Supreme Court, requires that if there is any reasonable interpretation of section 17 under which claims for violation of the rules established by Award 282 may be included, that is the interpretation which should be chosen. In proceeding from an apparently opposite approach, the District Court erred.

Little more need be added with specific reference to the District Court's statement that the parties to the National Rules Agreement could not have intended that section 17 "should be exclusively applicable" to claims under "an unanticipated award or the judgment." Its correctness turns entirely upon the court's characterization of Award 282 as "unanticipated," which we have shown is factually incorrect in significant respects and legally irrelevant in any event. For it is clear from the language of section 17, purporting to "bar" claims not handled in accordance with the provisions thereof, that the signatories of the National Rules Agreement intended to exclude other remedies for all claims within the purview of section 17. This intention corresponds with that embodied in labor-management grievance procedures generally. "If a grievance procedure cannot be made exclusive, it loses much of its desirability as a

method of settlement." *Republic Steel Corp. v. Maddox*, *supra*, 379 U.S. at 653.

Finally, the fact that all of the claims involved in this appeal are now barred by the terms of section 17 does not authorize judicial creation of an exception to the exclusiveness of the remedy under section 17. The "usual manner" for handling disputes under section 3 of the Railway Labor Act may include reasonable procedural regulations. See *Butler v. Thompson*, 192 F.2d 831, 833 (8th Cir. 1951). Time limits upon the presentation and appeal of claims and grievances are valid and enforceable. *Atlantic Coast Line R. Co. v. Pope*, 119 F.2d 39, 43-44 (4th Cir. 1941). To permit evasion of these limits on grounds not stated in the agreement would lead to either "chaos or a demolition of the concept of industrial peace through labor contracts fairly arrived at." Cf. *Flight Engineers' Int'l Ass'n v. American Airlines, Inc.*, 303 F.2d 5, 13 (5th Cir. 1962), *appeal dismissed per stipulation*, 314 F.2d 500 (5th Cir. 1963).

III. Adjudication by the District Court of individual claims arising out of alleged violations of Award 282 is not necessary to the enforcement of the judgment on the Award.

The main reason advanced by the District Court for its conclusion that "the claims here involved * * * may be judicially entertained without resort to the procedure under section 17" (J.A. 323) is that "there is presented here a judgment of this Court confirming the Award. This Court, like all courts, has the authority, in fact the duty, of enforcing its own judgments." (J.A. 322.)

Appellants do not quarrel with the major premise of this statement. There is no question but that the court, by appropriate decrees and orders, may require the carriers and the brotherhoods to comply with their respective obli-

gations under the Award. However, it is submitted that the Award did not require the parties to observe any particular procedure in the determination of individual claims arising under the Award, that the judgment upon the Award did not impose additional requirements but only judicial sanction for the commands of the Award itself, and that the judgment may not be enforced in this instance by requiring the parties to forfeit contract rights that were not affected by the Award or judgment.

Award 282 did not expressly address itself to the problem of claims. The only part of the Award having any possible bearing on the subject was section II Part I, which declared:

"All agreements, rules, regulations, interpretations, and practices, however established, with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms of this Award."
(J.A. 5)

If anything, this provision seems to uphold the application of section 17 to claims under the Award. Board 282 confirmed this impression in its answers to questions addressed to it by the parties during the pendency of the instant proceedings in the court below. The Board said that the Award did not make agreements by the parties for handling claims and grievances either "applicable" or "inapplicable" to claims based on alleged violations of the Award. See pp. 12-13, *supra*. Thus, the applicability of any particular agreement depends not on the Award but on the terms of the agreement. Moreover, though the Award "did not contemplate" that claims based on violations of the Award "should be handled *exclusively* under procedures established by or pursuant to Section 3 of the Railway Labor Act," "it was contemplated * * * that these types of claims could be so

handled.” (J.A. 16-17.) In short, both the applicability of contractual grievance procedures to claims arising out of Award 282 and the exclusiveness of such procedures depend on the terms of the particular agreement in question.

Upon the receipt of these answers, the jurisdiction of the District Court over appellee’s motion for supplemental relief terminated, and the motion should have been dismissed as not within the scope of the judgment. For, clearly, the judgment added nothing of substance to the commands of the Award. The judgment on the Award recited the filing of the Award, the filing of petitions to impeach the Award, the dismissal of the petitions, and the affirmance by this court of the decision dismissing the petitions to impeach. See *Brotherhood of Locomotive Firemen & Enginemen v. Chicago, B. & Q. R.R.*, 225 F. Supp. 11 (D.D.C.), *aff’d*, 118 U.S. App. D. C. 100, 331 F.2d 1020 (D.C.Cir.), *cert. denied*, 377 U.S. 918 (1964). Thereafter, the judgment said simply:

“IT IS ORDERED, ADJUDGED AND DECREED that judgment is hereby entered on the arbitration award heretofore filed herein, which judgment is final and conclusive upon the parties.” (J.A. 13.)

In order to see the proper scope of this judgment, it is necessary to look to the statutory provisions authorizing it. Section 4 of Public Law 88-108 directed that the arbitration be “conducted pursuant to sections 7 and 8 of the Railway Labor Act,” that the award be filed in the court below, and that the award be subject to section 9 of the Railway Labor Act. The foregoing sections of the Railway Labor Act provide for the filing of an award in the District Court where the controversy arose or the arbitration was entered into, as designated by the parties (§§ 7 Third (f), 8(k), 45 U.S.C. §§ 157 Third (f), 158(k)), and the filing of petitions for impeachment which may be entertained only

on the grounds of nonconformity to the substantive requirements of the Act, nonconformity to the agreement to arbitrate, or fraud or corruption (§ 9 Third, 45 U.S.C. § 159 Third). If no petitions for impeachment are filed within ten days, "the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties" (§ 9 Second, 45 U.S.C. § 159 Second). If petitions are filed, the court shall decide the issues properly presented and "final judgment shall be entered in accordance with said decision" (§ 9 Fourth, 45 U.S.C. § 159 Fourth). Thus, a judgment upon an award finally and conclusively determines that the award is not defective upon any of the grounds on which review is authorized. It also may be said to establish that the award is "conclusive * * * as to the merits and facts of the controversy submitted to arbitration" (see § 9 Second, 45 U.S.C. § 159 Second). But it does not add substantive provisions to the Award.

Different issues might be presented if the alleged violations of the Award on which the instant claims were founded had been committed in knowing and wilful defiance of the Award and judgment, or if the carriers were steadfastly refusing to recognize claims under Award 282 regardless of their timeliness and validity, and thus were frustrating the implementation of the Award. But neither of these situations is the case. It is undisputed with respect to the Deadman Control Claims that the carrier thought its position was correct and had good reason for so thinking. See note 6, *supra*, and accompanying text. In the case of the Orange Switcher No. 2 claims, the carrier's failure to use firemen on one engine for less than a month was unquestionably inadvertent. See p. 10, *supra*. Southern Pacific's good faith in the premises is shown by its willingness to settle a large number of claims that were timely presented without insisting on a final determination of the meaning

of the applicable provisions of the Award. See pp. 9, 11, *supra*. Thus, there is nothing in the record before the District Court to give even the color of support to the view that the order appealed from was somehow necessary to vindicate the effectiveness of the Award and judgment.

IV. Even if section 17 does not apply to claims based on Award 282, the District Court erred in allowing enforcement of claims which had been handled under section 17, denied on the merits, and not appealed.

The order granting appellee's motion for supplemental relief declared that the claims referred to in the motion "may be enforced without the Brotherhood or the employees it represents first resorting to the procedure established by section 17 of the said 1948 [National Rules] agreement." (J.A. 329.) This language was intended to dispose of the claims that had never been presented to the carrier before being included in the motion and of the claims that had been presented to the carrier only after the expiration of the period allowed by section 17. However, appellee's motion for supplemental relief advanced 16 claims as to which appellee had timely "resort[ed] to the procedure established by section 17." See pp. 11-12, *supra*. The status of these claims was not adjudicated by the order. (J.A. 326-328.) Accordingly, appellants filed a motion to amend the order by adding that claims which were presented in accordance with section 17 and disallowed on the merits were subject to the conditions of section 17 with respect to appeals, so that such claims which were not appealed would be barred to the extent provided in section 17 (J.A. 334-336). The court denied the motion to amend (J.A. 342), expressing the opinion that these claims also would be enforceable without regard to section 17 (J.A. 338-341).

Even assuming the correctness of the court's holding that claimants need not "first resort" to the procedures of section 17, it is submitted that this ruling was in error.

The District Court recognized that if a claim was presented to the carrier, denied, and the denial appealed through a decision on the merits by the appropriate adjustment board, the claim would be barred (J.A. 338), presumably because of the conclusive effect which the Railway Labor Act gives to adjustment board decisions, see *Union Pacific R.R. v. Price*, 360 U.S. 601 (1959). Although the Act does not, in terms, declare that unappealed intermediate grievance procedure decisions shall have the same effect, the agreement establishing and regulating the grievance procedure sometimes does, and the courts have consistently enforced such agreements when claimants have attempted to abandon already instituted grievance proceedings in favor of judicial proceedings. See *Satterfield v. Pennsylvania R.R.*, 323 F.2d 783 (2d Cir. 1963), *cert. denied*, 377 U.S. 937 (1964); *Larsen v. American Airlines, Inc.*, 313 F.2d 599 (2d Cir. 1963); *Arnold v. United Air Lines, Inc.*, 296 F.2d 191 (7th Cir. 1961); *Peoples v. Southern Pacific Co.*, 232 F.2d 707 (9th Cir. 1956); *Galley v. Pennsylvania R.R.*, 220 F. Supp. 190 (S.D.N.Y.), *aff'd*, 324 F.2d 502 (2d Cir. 1963); *Pacilio v. Pennsylvania R.R.*, 230 F. Supp. 752 (S.D.N.Y. 1964); *Crusen v. United Air Lines, Inc.*, 141 F. Supp. 347 (D. Colo.), *aff'd*, 239 F.2d 863 (10th Cir. 1956).

Section 17 of the National Rules Agreement provides that when an appeal is not taken within sixty days from an adverse decision by either the officer of the company authorized to receive claims and grievances or an officer who is empowered to hear appeals, "the matter shall be considered closed." Likewise, section 17 declares that a decision by the highest officer designated to handle claims and grievances is "final and binding," and a claim or grievance

which is not appealed within six months after such a decision to "a tribunal having jurisdiction"—presumably the appropriate adjustment board—"shall be barred" (J.A. 266). See p. 3, *supra*. Those claims which appellee timely submitted to the carrier's timekeeper—a procedure which appellee could not but have known constituted an invocation of section 17—and which the timekeeper disallowed on the merits should be held subject to these provisions. This argument is not based on the common-law doctrine of election of remedies, as the District Court believed (J.A. 339-340), although some courts have used that terminology with respect to the choice between judicial proceedings and grievance procedures. See *Michel v. Louisville & N.R. Co.*, 188 F.2d 224, 226 (5th Cir.), *cert. denied*, 342 U.S. 862 (1951); *Bower v. Eastern Airlines, Inc.*, 214 F.2d 623, 626 (3rd Cir.), *cert. denied*, 348 U.S. 871 (1954).¹⁸ Rather, it is based on the simple principle that one who seeks the benefits under a contract must accept its burdens. The following cases illustrate the application of this principle.

In *Bittner v. Roadway Express, Inc.*, 246 F. Supp. 62 (W.D. Pa. 1965), employees who had been laid off in 1962 when the terminal at which they worked was closed sued to enforce an asserted right of reinstatement when the terminal opened again in 1965. At the time they were laid off, the collective bargaining agreement did not contain a

¹⁸ The opinion in *Bower* is a good example of the flexibility with which common-law doctrines may be adapted to serve the needs of modern labor law. The court said: "Whether we say that the party is bound by his own voluntary election between an administrative and an alternative judicial remedy, or describe the party who initiated the administrative proceeding as estopped from denying its agreed final and binding character, or view this as an application of the rationale of *res judicata* in a new area, we are satisfied that the court should declare and enforce a rule of repose against the reexamination of the merits of plaintiff's claim in this case." 214 F.2d at 626. Though cases like *Michel* and *Bower* would today be controlled by *Union Pacific R.R. v. Price*, *supra*, and the statutory rationale which was advanced there, the opinions remain instructive.

grievance procedure. However, the one in force in 1965 did, and the plaintiffs had filed grievances under that procedure which were denied. In resisting a motion for summary judgment, the plaintiffs argued that the later-adopted grievance provision did not apply to their claims. The court deemed it unnecessary to pass on this argument, "in view of our opinion that plaintiffs may not resort to the Court to litigate an issue that was freely and fairly presented in a grievance procedure which plaintiffs themselves instituted * * * and which by its terms was final and binding * * *." *Id.* at 64. Similarly, in *Ficek v. Southern Pacific Co.*, 338 F.2d 655 (9th Cir. 1964), *cert. denied*, 380 U.S. 988 (1965), the carrier and an employee had settled a personal injury claim by the employee by an agreement which provided, *inter alia*, that the employee could return to work when the carrier's chief surgeon certified him as being physically fit to work. The employee sued for breach of this contract, alleging that the chief surgeon was arbitrarily withholding his certification. However, the employee had earlier submitted the same claim to arbitration under a clause of the collective bargaining agreement which covered "claims and grievances * * * arising out of the interpretation of agreements governing wages, rules, or working conditions." The plaintiff contended that this agreement did not cover his case because his suit was on the settlement agreement, not on the collective bargaining agreement. In affirming a summary judgment for the carrier, the court pointed out that an agreement to arbitrate may be implied from conduct. The plaintiff's submission to arbitration "evinced a subsequent agreement for private settlement." "The rule is sometimes stated in terms of waiver: A claimant may not voluntarily submit his claim to arbitration, await the outcome, and, if the decision is unfavorable, then challenge the authority of the arbitrators to act." *Id.* at

656-657. See also *Henderson v. Eastern Gas & Fuel Associates*, 290 F.2d 677, 680 (4th Cir. 1961), where the applicability of the grievance procedure was not "directly challenge[d]," but the court said that the employees' submission of claims "disclosed their interpretation of the arbitration clause as inclusive of their claims, a factor which is of persuasive significance." "They seek to obtain alleged contractual benefits but at the same time they would ignore or disavow other provisions of the Agreement which appear to operate to their disadvantage."

The reasoning of the foregoing cases is fully applicable to the case at bar. Resort to the grievance procedure of section 17 offers attractive advantages to the claimant: relative speed of determination, because of the short time limits involved;¹⁹ representation by local union officials, who generally would not be qualified to act in court; a decision by persons who are familiar with the operating conditions giving rise to the claim; and definite procedural advantages once the case gets to court in the event the carrier refuses to comply with an adjustment board decision in favor of the claimant.²⁰ Having chosen to avail itself of these and other advantages with respect to certain of the claims involved in this case, appellee should not be heard to deny the applicability to those claims of the conditions of section 17. The claims are barred and the matter should be "considered closed."

¹⁹ There are time limits not only on the filing of claims and grievances, but also on the decision of claims and grievances by carrier officials. If notice of disallowance is not given within sixty days, the claim or grievance "shall be considered valid and settled accordingly." (J.A. 266.) See p. 3, *supra*.

²⁰ *E.g.*, exemption from costs, allowance of attorney's fees. Section 3 First (p), 45 U.S.C. § 153 First (p). See *Washington Term. Co. v. Boswell*, 75 U.S. App. D.C. 1, 124 F.2d 235, 238-244 (1941), *aff'd by equally divided Court*, 319 U.S. 732 (1943).

Conclusion

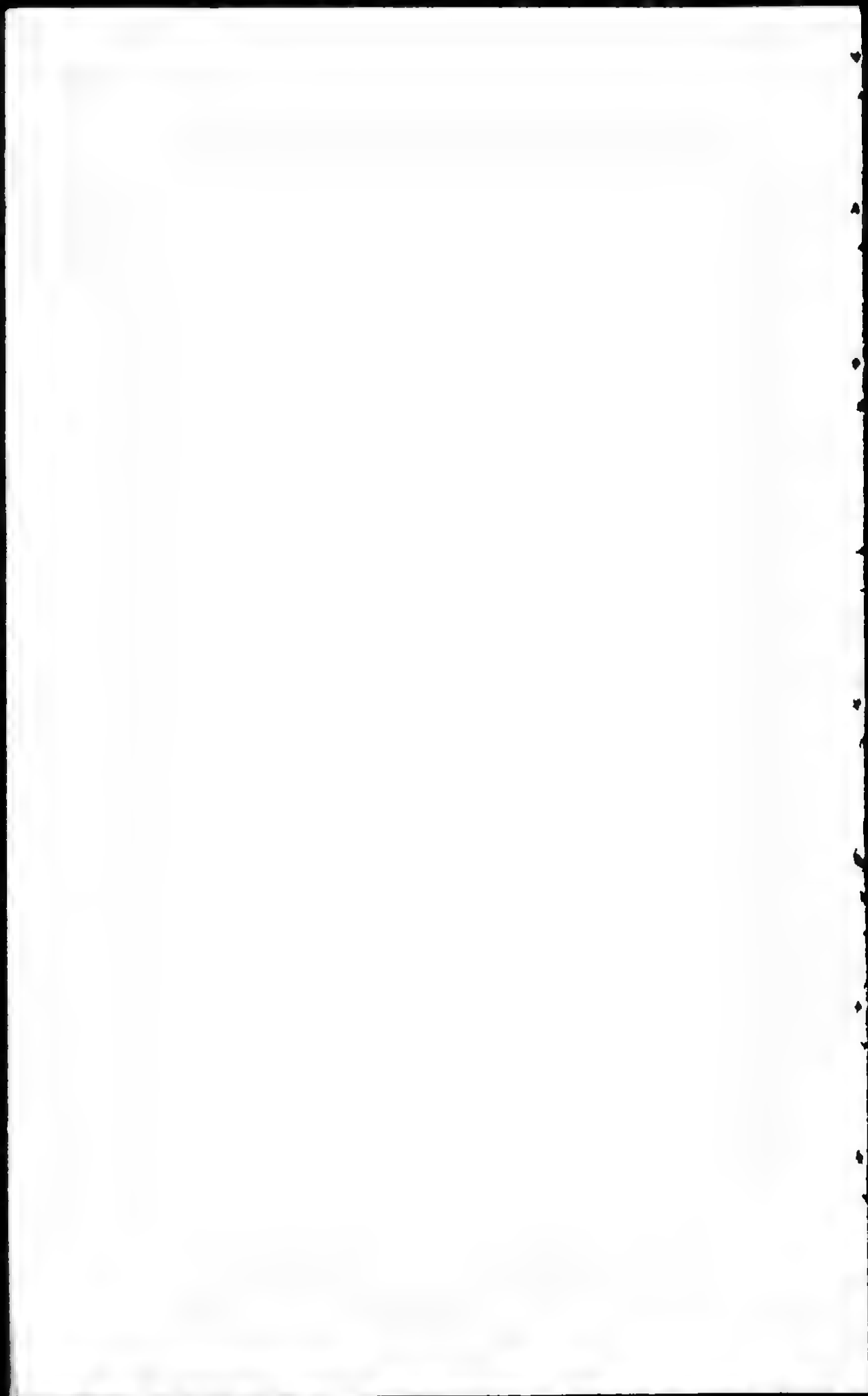
For the reasons stated above, the orders appealed from should be reversed.

Respectfully submitted,

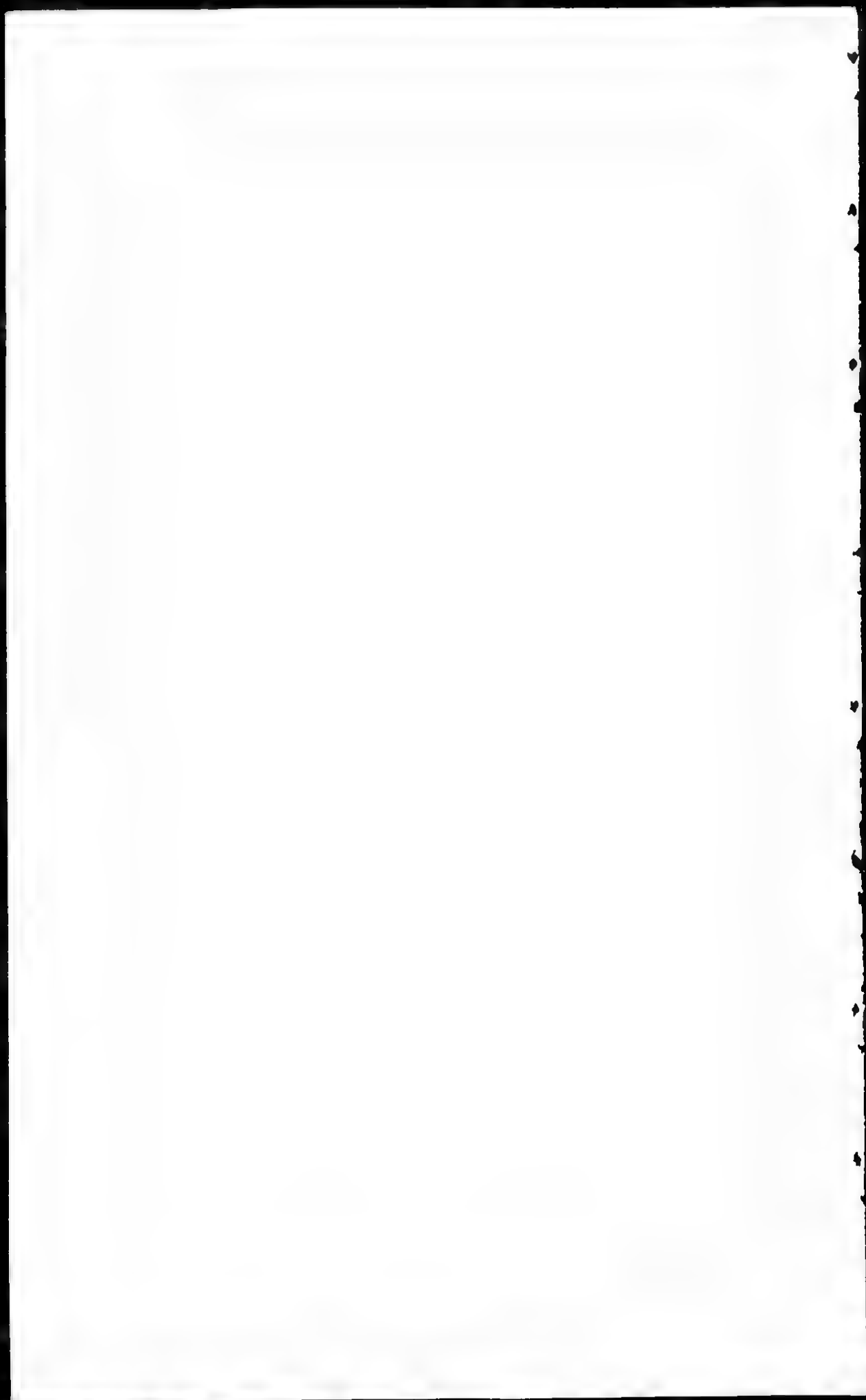
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APPENDIX OF STATUTES INVOLVED



APPENDIX OF STATUTES INVOLVED

Public Law 88-108, 77 Stat. 132 (1963), provides in pertinent part:

Whereas the labor dispute between the carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees and certain of their employees represented by the Brotherhood of Locomotive Engineers, Brotherhood of Locomotive Firemen and Enginemen, Order of Railway Conductors and Brakemen, Brotherhood of Railroad Trainmen, and the Switchmen's Union of North America, labor organizations, threatens essential transportation services of the Nation; and

Whereas it is essential to the national interest, including the national health and defense, that essential transportation services be maintained; and

Whereas all the procedures for resolving such dispute provided for in the Railway Labor Act have been exhausted and have not resulted in settlement of the dispute; and

Whereas the Congress finds that emergency measures are essential to security and continuity of transportation services by such carriers; and

Whereas it is desirable to achieve the above objectives in a manner which preserves and prefers solutions reached through collective bargaining; and

Whereas, on August 2, 1963, the Secretary of Labor submitted to the carrier and organization representatives certain suggestions as a basis of negotiation for disposition of the fireman (helper) and crew consist issues in the dispute and thereupon through such negotiations tentative agreement was reached with respect to portions of such suggestions; and

Whereas, on August 16, 1963, the carrier parties to the dispute accepted and the organization parties to the dispute accepted with certain reservations the Secretary of Labor's suggestion that the fireman (helper) and crew consist issues be resolved by binding arbitration but the said

parties have been unable to agree upon the terms and procedures of an arbitration agreement: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That no carrier which served the notices of November 2, 1959, and no labor organization which received such notices or served the labor organization notices of September 7, 1960, shall make any change except by agreement, or pursuant to an arbitration award as hereinafter provided, in rates of pay, rules, or working conditions encompassed by any of such notices, or engage in any strike or lockout over any dispute arising from any of such notices. Any action heretofore taken which would be prohibited by the foregoing sentence shall be forthwith rescinded and the status existing immediately prior to such action restored.

Sec. 2. There is hereby established an arbitration board to consist of seven members. * * *

Sec. 3. Promptly upon the completion of the naming of the arbitration board the Secretary of Labor shall furnish to the board and to the parties to the dispute copies of his statement to the parties of August 2, 1963, and the papers therewith submitted to the parties, together with memorandums and such other data as the board may request setting forth the matters with respect to which the parties were in tentative agreement and the extent of disagreement with respect to matters on which the parties were not in tentative agreement. The arbitration board shall make a decision, pursuant to the procedures hereinafter set forth, as to what disposition shall be made of those portions of the carriers' notices of November 2, 1959, identified as "Use of Firemen (Helpers) on Other Than Steam Power" and "Consist of Road and Yard Crews" and that portion of the organizations' notices of September 7, 1960, identified as "Minimum Safe Crew Consist" and implementing proposals pertaining thereto. The arbitration board shall incorporate in such decision any matters on which it finds the parties were in agreement, shall resolve the matters on

which the parties were not in agreement, and shall, in making its award, give due consideration to those matters on which the parties were in tentative agreement. Such award shall be binding on both the carrier and organization parties to the dispute and shall constitute a complete and final disposition of the aforesaid issues covered by the decision of the board of arbitration.

Sec. 4. To the extent not inconsistent with this joint resolution the arbitration shall be conducted pursuant to sections 7 and 8 of the Railway Labor Act, the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act. The United States District Court for the District of Columbia is hereby designated as the court in which the award is to be filed, and the arbitration board shall report to the National Mediation Board in the same manner as arbitration boards functioning pursuant to the Railway Labor Act. The award shall continue in force for such period as the arbitration board shall determine in its award, but not to exceed two years from the date the award takes effect, unless the parties agree otherwise.

* * * * *

Sec. 6. The parties to the disputes arising from the aforesaid notices shall immediately resume collective bargaining with respect to all issues raised in the notices of November 2, 1959, and September 7, 1960, not to be disposed of by arbitration under section 3 of this joint resolution and shall exert every reasonable effort to resolve such issues by agreement. The Secretary of Labor and the National Mediation Board are hereby directed to give all reasonable assistance to the parties and to engage in mediatory action directed toward promoting such agreement.

Sec. 7. (a) In making any award under this joint resolution the arbitration board established under section 2 shall give due consideration to the effect of the proposed award upon adequate and safe transportation service to the public and upon the interests of the carrier and employees af-

fect, giving due consideration to the narrowing of the areas of disagreement which has been accomplished in bargaining and mediation.

* * * * *

Section 2 of the Railway Labor Act as amended, 48 Stat. 1186 (1934), 45 U.S.C. §§ 151a, 152, provides in pertinent part:

GENERAL PURPOSES

(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

* * * * *

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

* * * * *

Section 3 of the Railway Labor Act, as amended, 48 Stat. 1189 (1934), 45 U.S.C. § 153, as amended, Public Law 89-456, 80 Stat. 208 (1966), provides in pertinent part:

First. There is hereby established a Board, to be known as the 'National Railroad Adjustment Board', the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

* * * * *

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of ap-

proval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

* * * * *

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

* * * * *

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before a day named. In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United

States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided, however*, That such order may not be set aside except for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order

of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28, United States Code.

* * * * *

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

* * * * *

Section 5 of the Railway Labor Act, as amended, 48 Stat. 1195 (1934), as amended, 45 U.S.C. § 155, provides in pertinent part:

First. The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in a conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is founded by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 10 of this Act) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this Act.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the intervening period the parties agree to arbitration, or an emergency board shall be created under section 10 of this Act, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

* * * * *

Section 7 of the Railway Labor Act, 44 Stat. 582 (1926), as amended, 45 U.S.C. § 157, provides:

First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however,* That the failure or refusal of either party to submit a controversy to arbitration

shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise.

Second. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six, the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. (a) When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board, and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this Act, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or complete such selection.

(b) The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however,* That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representatives as they may respectively elect.

(c) Upon notice from the Mediation Board that the par-

ties, or either party, to an arbitration desire the reconvening of the board of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Each member of any board of arbitration created under the provisions of this Act named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating

thereto, to the Mediation Board, to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under the Interstate Commerce Act, as amended.

(g) A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and he hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of any person to comply with such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same

extent and under the same conditions and penalties as provided for in the Act to regulate commerce approved February 4, 1887, and the amendments thereto.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena.

Section 8 of the Railway Labor Act, 44 Stat. 584 (1926), as amended, 45 U.S.C. § 158, provides:

The agreement to arbitrate—

- (a) Shall be in writing;
- (b) Shall stipulate that the arbitration is had under the provisions of this Act;
- (c) Shall state whether the board of arbitration is to consist of three or of six members;
- (d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board, and, when so acknowledged, shall be filed in the office of the Mediation Board;
- (e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;
- (f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;
- (g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;
- (h) Shall fix a period from the date of the appointment

of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked by a party to such agreement: *Provided, however*, That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no

board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this Act, delivered to such board of arbitration.

Section 9 of the Railway Labor Act, 44 Stat. 585 (1926), as amended, 45 U.S.C. § 159, provides in pertinent part:

First. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this Act for such awards, or that the proceedings were not substantially in conformity with this Act;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this Act: *Provided further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity,

and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground of invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

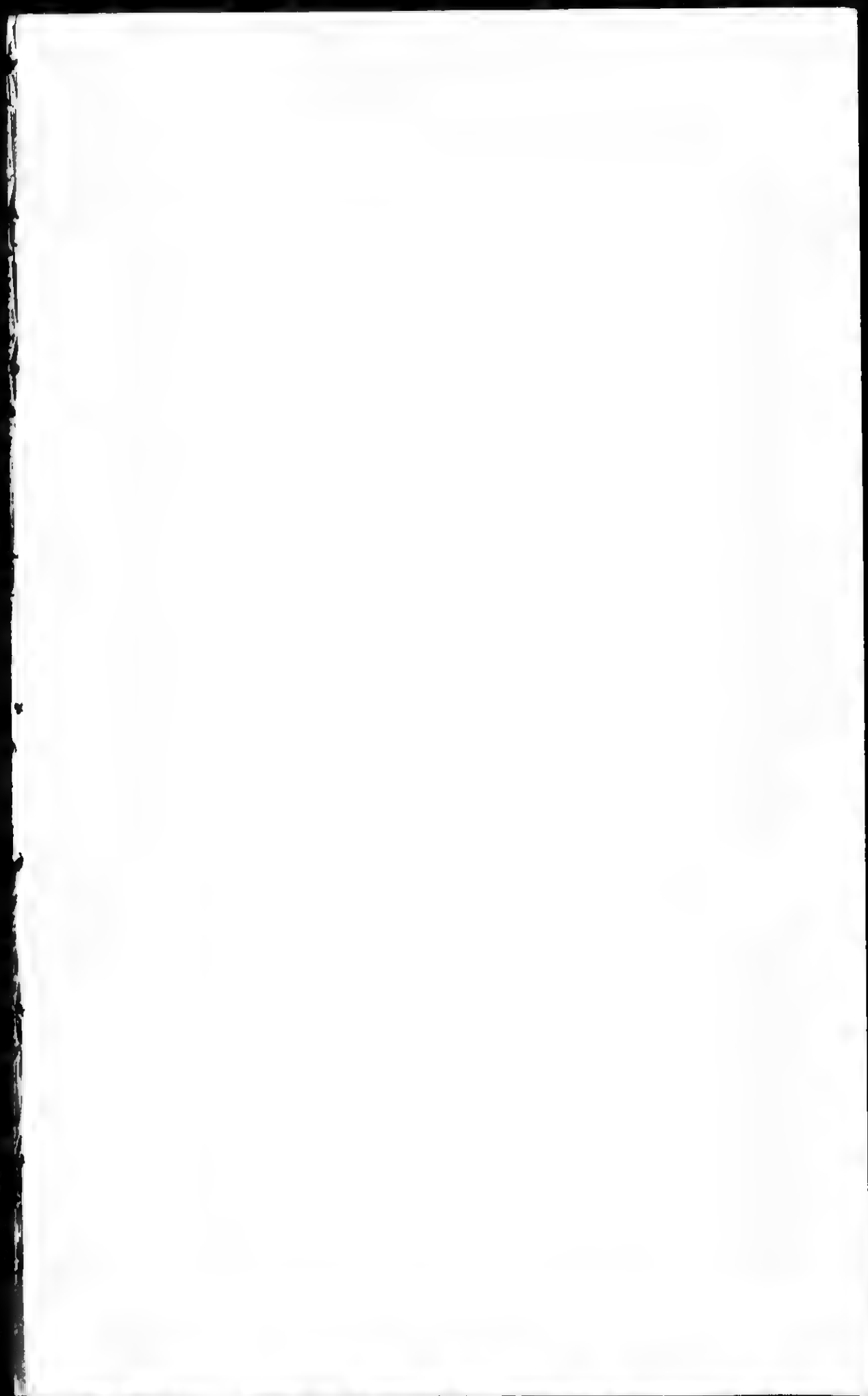
Fifth. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. The determination of said circuit court of appeals upon said questions shall be final, and being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.

* * * * *



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REPLY BRIEF FOR APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,378

SOUTHERN PACIFIC COMPANY, ET AL., *Appellants,*

v.

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND
ENGINEMEN, *Appellee.***

**APPEAL FROM ORDERS OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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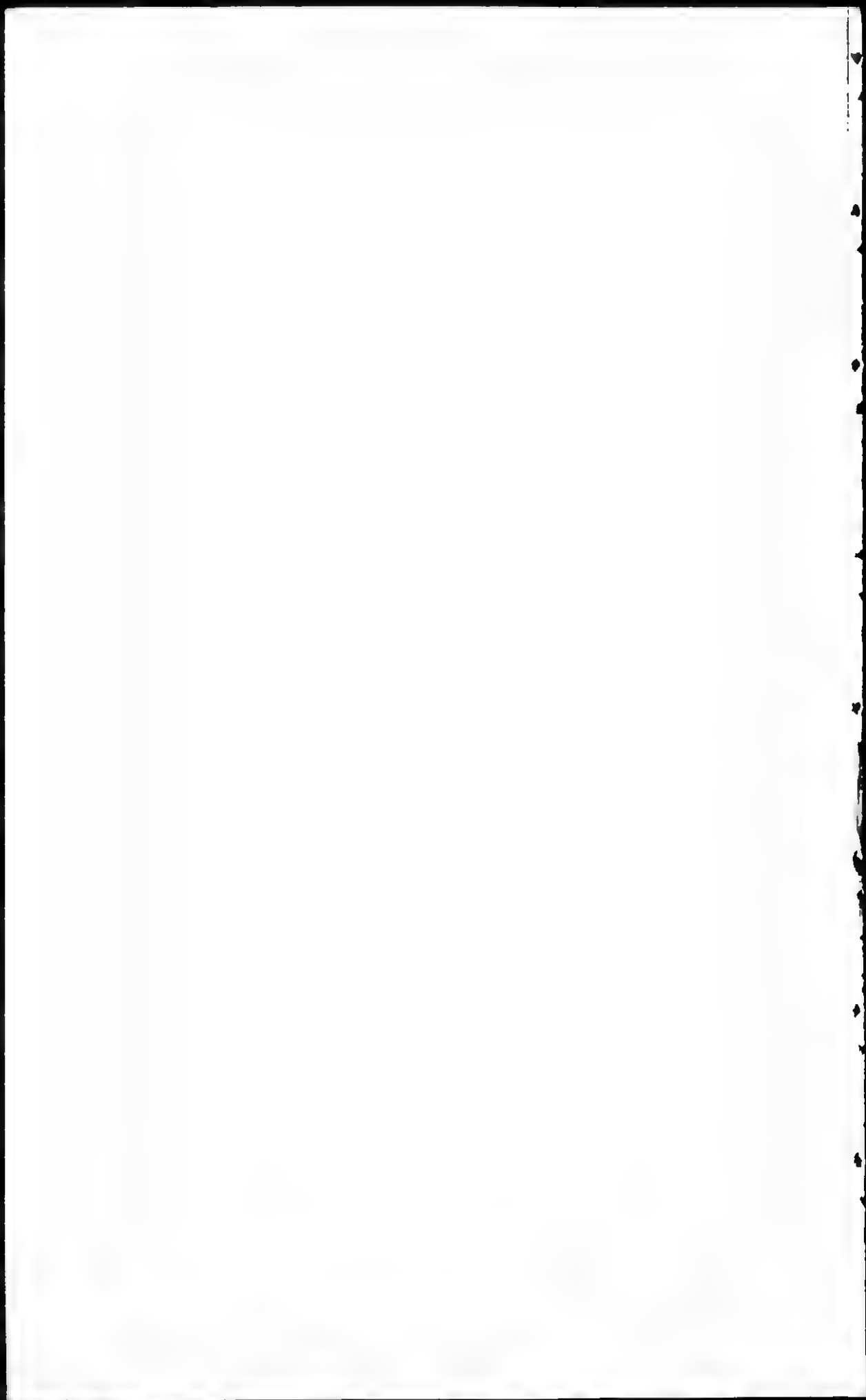


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APPEAL FROM ORDERS OF THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF FOR APPELLANTS

Introduction

The Brotherhood's brief discusses a variety of different kinds of claims based upon various alleged violations of the Award of Arbitration Board No. 282 by a number of railroads. However, the orders from which this appeal is taken concern only two kinds of claims against only one railroad.¹ The claims are based on Southern Pacific Com-

¹ Although the Brotherhood's motion for supplemental relief sought a declaration as to the general applicability of section 17 of the National Rules Agreement to claims based on alleged violations of the Award, the District Court limited its order granting the motion to the specific claims alleged in the motion and accompanying affidavits, and the Brotherhood did not cross-appeal from this determination. See p. 7 fn. 4 of our opening brief.

pany's failure to assign firemen to crews which used road locomotives not equipped with "deadman" controls to perform particular switching movements, and on Southern Pacific's failure to assign firemen to "Orange Switcher No. 2" during a 27-day period when Southern Pacific inadvertently had neglected to designate that switcher as a "blankable" assignment under the Award.

In our opening brief, we demonstrated that the "deadman control" and "Orange Switcher" claims are "minor" disputes subject to section 3 of the Railway Labor Act (45 U.S.C. § 153) because the Award of Arbitration Board No. 282 changed and became part of the "agreements" of the parties for purposes of the Act, and employees' claims based upon the Award are therefore "disputes * * * growing out of the interpretation or application of agreements," as that language is used in section 3 First (i). We also stated our view, alternatively, that claims based upon the Award are "disputes * * * growing out of grievances" subject to section 3 of the Act, because they are "founded upon some incident of the employment relation, or asserted one, independent of those covered by the collective agreement" and are "to rights accrued, not merely to have new ones created for the future." See *Elgin, J. & E. Ry. v. Burley*, 325 U.S. 711, 723 (1945), *opinion adhered to*, 327 U.S. 661 (1946). From either viewpoint, the claims encompassed within the orders from which this appeal is taken were within the exclusive jurisdiction of adjustment boards established pursuant to section 3 of the Act and should not have been entertained by the court below. *Brotherhood of Locomotive Engineers v. Louisville & N.R.R.*, 373 U.S. 33 (1963); *Pennsylvania R.R. v. Day*, 360 U.S. 548 (1959); *Order of Railway Conductors v. Pitney*, 326 U.S. 561 (1946). See pp. 19-30 of our opening brief.

Apart from the question of the court's jurisdiction over the claims themselves, we indicated why the court below

erred in holding that the claims are not subject to section 17 of the National Rules Agreement. First, since the claims are "minor" disputes for the reasons just stated, section 3 First (i) of the Railway Labor Act (45 U.S.C. § 153 First (i)) requires that they "be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes"—that is, in the manner prescribed by section 17 of the parties' agreement. Second, even if these claims are not subject to section 3 of the Act and eventually may be asserted in court, nevertheless they should first be handled in the manner prescribed by section 17 because that is the manner in which the parties have agreed to handle "[a]ll claims or grievances arising on and after November 1, 1948 * * *" (J.A. 266). "As a general rule in cases to which federal law applies, federal labor policy requires that individual employees wishing to assert contract grievances must *attempt* use of the contract grievance procedure agreed upon by employer and union as the mode of redress." *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652 (1965) (emphasis in original).² See pp. 19-30 of our opening brief.

The court below rested its ruling that section 17 of the National Rules Agreement does not apply to the claims involved in this case upon two apparently alternative premises. First, the court construed the agreement: "[T]he parties could not have had in contemplation the possibility of a compulsory arbitration sometime in the future" (J.A. 323). Second, the court said that the agree-

² In *Walker v. Southern Ry.*, 35 U.S. Law Week 4047 (Dec. 5, 1966), the Supreme Court held that *Maddox* did not overrule *Moore v. Illinois Central R.R.*, 312 U.S. 630 (1941), in the case of an action brought prior to the 1966 amendments of section 3 of the Railway Labor Act. *Moore* sustained the maintenance of suits by railroad employees upon state-created causes of action for wrongful discharge. Whatever may be its ultimate fate, *Moore* continues to have no application to federally-created claims asserted on behalf of employees who have not been discharged, as in the instant case. See pp. 27-30 of our opening brief.

ment "may not oust the court of jurisdiction" to enforce its judgment on the Award (J.A. 322-323).

As we indicated in our opening brief, the court below was not competent to decide this case on the first ground: disputes as to the interpretation and application of agreements such as the National Rules Agreement obviously are section 3 disputes. See pp. 32-35 of our opening brief. (Pretermitted that argument, we also demonstrated that section 17 *was* intended to apply to the kind of claims involved in this case and that the court below interpreted the agreement incorrectly in deciding otherwise. See pp. 36-39 of our opening brief.)

With respect to the second premise of the court's decision, we pointed out in our opening brief that deference to the grievance procedure of section 17 would not "oust" the court below of jurisdiction or conflict with its power to enforce its judgments. To be sure, the court below did enter a judgment confirming the validity of the Award, and it may be assumed that the court has power to compel compliance with the Award by any party that insists upon violating it. But the Award itself had no effect upon the application of section 17 of the National Rules Agreement. A judgment which simply confirmed the Award could have no more effect. Consequently, adjudication by the court below of claims which had not been handled in accordance with section 17 cannot properly be said to be "necessary or appropriate for the * * * enforcement of the judgment" (J.A. 19). See pp. 39-43 of our opening brief. Moreover, even if the court's power to enter judgment on the Award somehow necessitates jurisdiction to adjudicate individual money claims based upon alleged violations of the Award, it does not follow that requiring compliance with section 17 of the National Rules Agreement would "oust" the court of that assumed jurisdiction. Section 17 provides that

claims which have traversed the grievance procedure on the property may be appealed within six months to "a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved" (J.A. 266). It does not limit such appeals to any particular tribunal. Perhaps "managements and employees alike" (Appellee's Br. p. 18) understand that the National Railroad Adjustment Board or other adjustment board established pursuant to the Act is the "tribunal having jurisdiction" of ordinary claims and grievances, because such claims and grievances are uniformly subject to section 3 of the Act. But if section 3 does not apply to claims based upon alleged violations of Award 282 and does not preclude the court below from entertaining such claims, then the adjustment boards established pursuant to section 3 have no exclusive jurisdiction over such claims, and the court below is a "tribunal having jurisdiction" to which claims may be appealed following exhaustion of the grievance procedure established by section 17 of the National Rules Agreement.³ In that case, the application of section 17 to such claims would merely postpone the court's exercise of jurisdiction. In no case would it "oust" the court of jurisdiction.

Nothing in the Appellee's Brief detracts from these contentions. Indeed, the Brotherhood has not even undertaken to answer most of them. None of the Brotherhood's argu-

³ The Joint Committee established by the supplementary Memorandum Agreement of June 29, 1949, is also such a tribunal in cases where a dispute over the interpretation or application of section 17 itself is involved. Appellee's assertion that the Joint Committee's sole function is to decide disputes over the wage provisions of the National Rules Agreement (Br. p. 18 fn. 2) is difficult to fathom in view of the explicit language of the Memorandum Agreement "that this Joint Committee, when established, will be a tribunal within the meaning of paragraph (c) of Section 17" of the National Rules Agreement. (J.A. 288.) The Memorandum Agreement also provides for appeals to "a tribunal having jurisdiction pursuant to law or agreement" of cases in which the Joint Committee deadlocks and no other disposition is agreed upon (*ibid.*).

ments requires more than a brief response. We take each in the order in which it appears in the Brotherhood's brief.

Reply to the Brotherhood's Arguments

1. *Processing of "thousands" of alleged claims would have been no more "impossible" by means of the grievance procedure than in court.* The Brotherhood contends (pp. 12-20) that it "would have been an utterly impossible task for any railway labor organization" (p. 15) to process the "thousands upon thousands of employees' claims and grievances that [allegedly] resulted from the carriers' violations and misapplications of the Arbitration Award" (p. 36) in the manner prescribed by the parties' agreement and by section 3 of the Railway Labor Act. But—apart from the fact that other labor organizations apparently have done just that⁴—the Brotherhood fails to explain why it would be less difficult to process such claims in court. If there are "thousands upon thousands" of these claims in existence (the record does not show them), it would be surprising if Congress intended them to be dumped upon the courts rather than handled in the usual manner.

2. *The background of the arbitrators has nothing to do with the status of claims under the Award.* The Brotherhood seeks (pp. 20-24) to distinguish claims based on the Award from claims arising under collective bargaining agreements on the ground that the Award was "written by two college professors and a professional arbitrator, no

⁴ The Brotherhood of Locomotive Engineers, which represents a number of firemen on the Southern Pacific, is prosecuting claims on behalf of such firemen, involving the Arbitration Award, in the manner prescribed by the section 17 grievance procedure (J.A. 177). Further, neither the Brotherhood of Locomotive Engineers nor the Switchmen's Union of North America, both of which are parties to the Arbitration Award and to the National Rules Agreement (J.A. 264) has joined with the Brotherhood of Locomotive Firemen and Enginemen in the motion now before this Court on appeal.

one of whom had previously had more than a very limited experience in the field of railway labor relations" (p. 23)—a statement for which the Brotherhood furnishes no record citation. That fact, if it be a fact, ignores the foundations of our argument that the Award is an "agreement" for purposes of section 3 because the Congress provided that it should be rendered pursuant to sections 7 through 9 of the Railway Labor Act, and provided further that, like other Railway Labor Act arbitration awards, it should constitute a "complete and final disposition" of proposed changes in the parties' *agreements*. See Pub. L. 88-108, §§ 3, 4, and our opening brief at pp. 24-26. It ignores our argument that if claims based upon violations of the Award are not disputes "growing * * * out of the interpretation or application of agreements" for purposes of section 3, they are disputes "growing out of grievances" and therefore are within the ambit of section 3. And it ignores the Brotherhood's own agreement, quite apart from section 3, to handle "[a]ll claims and grievances" in the manner prescribed by section 17 of the National Rules Agreement.

3. *The Arbitration Board's power to interpret its Award does not change the procedure for determining individual money claims.* The Brotherhood seeks (pp. 24-27) to distinguish claims on behalf of individual employees involving the Arbitration Award from other section 3 claims on the ground that under section 8(m) of the Act (45 U.S.C. § 158(m)), the parties to an arbitration award may ask the arbitration board to resolve any "difference arising as to the meaning, or the application of the provisions, of" the Award. We note in passing that if section 8(m) gives an arbitration board jurisdiction of individual claims based upon its award, surely it also excludes concurrent jurisdiction of such claims by a court, and the orders below should be set aside. See *Brotherhood of Rail-*

road Trainmen v. Chicago, M., St. P. & Pac. R.R., 120 U.S. App. D.C. 295, 345 F.2d 985 (1965); *Brotherhood of Railroad Trainmen v. Certain Carriers*, 121 U.S. App. D.C. 230, 349 F.2d 207 (1965). More fundamentally, however, other sections of the Act clearly preclude an arbitration board from adjudicating individual money claims. Section 7 Third (c) (45 U.S.C. § 157 Third (c)) prohibits an arbitration board which has been reconvened to interpret its award from considering any "question other than . . . the questions relating to the meaning or application of the award, submitted by the parties in writing." And section 5 Third (d) (45 U.S.C. § 155 Third (d)) provides that "no evidence other than that contained in the record filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties." Lacking authority to receive the evidence on which a claim is based except for purposes of illustration, to resolve disputed questions of fact on which the validity of a claim might depend, and to interpret work and pay rules (other than those contained in the award itself) involved in the determination of a claim, the board certainly lacks the powers needed for full adjudication of individual claims based on the award.

The conclusion which the Brotherhood seeks to draw from the Arbitration Board's power to construe its Award—that claims based upon its alleged violation are not subject to section 3 (p. 24)—plainly is unsupportable. Just as a "party" to an arbitration—that is a carrier or a union—may submit to the arbitration board "any controversy over the meaning or application of their award" (45 U.S.C. § 157 Third (c)), so too any "party" to an agreement arrived at through mediation—that is a carrier or a union—"may apply to the [National] Mediation Board for an interpretation of the meaning or application of such agree-

ment" in order to dispose of a controversy "over the meaning or the application of" the agreement (45 U.S.C. § 155 Second). Neither of the foregoing provisions authorizes the adjustment of money claims on behalf of *individual employees* who allege that they have been deprived of some right to which they are entitled under the parties' "agreements," whether arrived at voluntarily or by arbitration.⁵

⁵ With respect to the Mediation Board, see NMB, Sixteenth Annual Report (1950), p. 81; NMB, Thirty-First Annual Report (1965), pp. 43-44:

"Under section 5, second, of the Railway Labor Act, the National Mediation Board has the duty of interpreting the specific terms of mediation agreements. Requests for such interpretations may be made by either party to mediation agreements, or by both parties jointly. * * *

"In making such interpretations, the National Mediation Board can consider only the meaning of the specific terms of the mediation agreement. The Board does not attempt to interpret the application of the terms of a mediation agreement to particular situations. This restriction in making interpretations under section 5, second, is necessary to prevent infringement on the duties and responsibilities of the National Railroad Adjustment Board under section 3 of title I of the Railway Labor Act * * *. These sections of the law make it the duty of such adjustment boards to decide disputes arising out of employee grievances and out of the interpretation or application of agreement rules.

"The Board's policy in this respect was stated as follows in interpretation No. 72 (a), (b), (c), issued January 14, 1959:

"The Board has said many times that it will not proceed under section 5, second, to decide specific disputes. This is not a limitation imposed upon itself by the Board, but is a limitation derived from the meaning and intent of section 5, second, as distinguished from the meaning and intent of section 3. * * *

"The act requires the National Mediation Board upon proper request to make an interpretation when a 'controversy arises over the meaning or application of any agreement reached through mediation.' It would seem obvious that the purpose here was to call upon the Board for assistance when a controversy arose over the meaning of a mediation agreement because the Board, in person, or by its mediator, was present at the formation of the agreement and presumably knew the intent of the parties. Thus, the Board was in a particularly good position to assist the parties in determining 'the meaning or application' of an agreement. However, this obligation was a narrow one in the sense that the Board shall

Such claims are governed by section 3, which applies to "disputes between an *employee or group of employees* and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements. * * *"

4. *Compliance with the grievance procedure would not have been "futile."* The Brotherhood argues at length (pp. 27-39) that it should not be required to comply with section 17 of the National Rules Agreement because "the processing of individual claims and grievances in the manner required by section 17 would be a vain under-

interpret the 'meaning' of agreements. In other words, the duty was to determine the intent of the agreement in a general way. This is particularly apparent when the language is compared to that in section 3, first (i). In that section the National Railroad Adjustment Board is authorized to handle *disputes* growing out of grievances or out of the interpretation or application of agreements, whether made in mediation or not. This section has a different concept of what parties may be concerned in the dispute. That section is concerned with disputes between an employee or group of employees, and a carrier or group of carriers. In section 5, second, the parties to the controversy are limited to the parties making the mediation agreement. Further, making an interpretation as to the meaning of an agreement is distinguishable from making a final and binding award in a dispute over a grievance or over an interpretation or application of an agreement. The two provisions are complementary and in no way overlapping or inconsistent. Section 5, second, in a real sense, is but an extension of the Board's mediatory duties with the added duty to make a determination of issues in proper cases.'" [Emphasis in original.]

With respect to arbitration boards, see *Hearings Before the Senate Committee on Commerce on the Administration of Public Law 88-108*, 89th Cong., 1st Sess., pp. 370-71 (testimony of Ralph T. Seward, Chairman, Arbitration Board No. 282):

"Under the Railway Labor Act, we can * * * be reconvened to interpret our award. Our interpretations or our powers are limited. We cannot hear new evidence. We are asked under the law hypothetical questions of interpretation and we can answer those hypothetical questions. But, we cannot, for example, issue an award directing a railroad to pay so much to John Smith. We can issue an interpretation of how our award should apply to the hypothetical situation, which the parties raise. Now, that is the legal situation which confronts us under the Railway Labor Act, which affects, of course, the practicality of individual men securing immediate relief from us. We can't do it."

taking" (p. 27). It would be "vain" because, according to the Brotherhood, the "carriers' violations and misapplications of the Arbitration Award were the result of decisions that originated at the top of the carriers' operating officers" (p. 29) and were "masterminded" by a group of "top echelon . . . railroad officials" known as the National Railway Labor Conference from whose "fertile minds" came "novel and ingenious" schemes for the discharge of firemen (pp. 29-30); and also because, according to the Brotherhood, compliance with the Rule would require submission of claims to the First Division of the National Railroad Adjustment Board, which is said to be several years behind in its work, after which enforcement proceedings under section 3 First (p) of the Railway Labor Act might still be necessary (pp. 36-39). These contentions are unsupported, either by the record or in fact, and are wholly unsound in principle.

First, the allegations concerning the origin and national "masterminding" of violations of the Award are without support in the record.⁶ (See J.A. 173-174.) What the record shows, with respect to the two categories of claims in issue here, is that the "deadman" control claims are based upon practices which probably did not violate the Award and which in any event were confined to only three of the Southern Pacific's yards, and that top management put a stop to the practices after the Brotherhood objected to them (J.A. 252-256, 278-284). The "Orange Switcher" claims are based upon an inadvertent violation of the Award which lasted only 27 days (J.A. 256-259, 284-286). There is nothing in the record to indicate that top Southern Pacific officials, much less national carrier representatives, knew anything about these alleged violations when they

⁶ Likewise, the assertion (p. 30) that over half the nation's firemen were discharged under the Arbitration Award is false and is without support in the record. See *Hearings, supra* note 5, at 466, 510.

first occurred. Thus there is no substance to the Brotherhood's contention that the disposition of claims based upon alleged violations of the Arbitration Award was predetermined from the top in advance (see Appellee's Br. p. 29) and therefore that normal handling would be "futile".

Second, though we know of no authority holding that "futility" will ever excuse compliance with section 3 of the Railway Labor Act and railway labor grievance procedures, we doubt in any event that "futility" could be shown on behalf of employees who have not even attempted to use those procedures. "[F]ederal labor policy requires that individual employees wishing to assert contract grievances must *attempt* use of the contract grievance procedure agreed upon by employer and union as the mode of redress." *Republic Steel Corp. v. Maddox*, *supra* p. 3. In this case futility cannot be shown, for when the required attempt was made—when "deadman control" and "Orange Switcher" claims were presented in the time and manner prescribed by the section 17 procedure—those claims were eventually paid (J.A. 279, 282, 285).⁷

⁷ The fact that the Southern Pacific's Manager of Personnel first denied "deadman control" and "Orange Switcher" claims does not show "futility" of the grievance procedure. The procedure followed on Southern Pacific provides for conferences following such denials (J.A. 176, 273-274), and thus contemplates the possibility that negotiations between the Manager of Personnel and the Brotherhood's General Chairman may induce the former to change his initial decision. The situation is entirely different from the one in *United Protective Workers v. Ford Motor Co.*, 223 F.2d 49 (7th Cir. 1955), decided before *Maddox*, on which the Brotherhood relies (p. 28). There the employer firmly announced after correspondence concerning the employee's claim, that "no amount of negotiation" would change its decision. The grievance procedure made the employer's decision final. In the case at bar, there is no evidence that Southern Pacific ever closed its mind to further consideration of "deadman control" and "Orange Switcher" claims. Furthermore, Southern Pacific's attitude could not control the outcome of the grievance procedure because of the provision for appeal to "a tribunal having jurisdiction"—either an evenly-balanced or an impartial tribunal. See pp. 4-5, *supra*.

Third, whatever relevance the backlog in the First Division might have in other cases at other times, it clearly is irrelevant here. For years, Southern Pacific and the Brotherhood have maintained by agreement a special board of adjustment to which the parties always submit claims which otherwise would be appealed to the First Division. The special board keeps its docket current. (J.A. 176.) Even in the absence of agreement, section 3 of the Act, as amended in 1966, now provides that *either* the carrier or the union may compel submission of claims to a special board of adjustment, thus avoiding the First Division's backlog. Public Law 89-456, § 1, 80 Stat. 208.

More fundamentally, however, the Brotherhood's contentions as to "futility" are in substance a frontal assault on the adequacy and necessity of the procedures to which the Brotherhood itself agreed in the National Rules Agreement and which the Congress prescribed in section 3 of the Railway Labor Act. Those procedures serve the same purposes with respect to Arbitration Award claims as the Brotherhood says they serve (p. 29) with respect to claims based upon alleged violations of other rules. That is, they prevent the accumulation of large numbers of claims unknown to carrier officials and thus give the carrier an opportunity to review the situation before it "snowball[s]" (p. 29) into a major conflict. They also prevent the assertion of stale claims after the relevant facts can no longer be ascertained. The first of these objectives is relevant to both categories of claims here in issue. The second objective is relevant to the "deadman control" claims, which arose from alleged events which cannot be verified after the lapse of any significant period of time (J.A. 282, 284). Thus claims premised upon violations of the Arbitration Award cannot be distinguished, on the basis of the Brotherhood's contentions, from other types of claims to which

section 17 of the National Rules Agreement and section 3 of the Railway Labor Act concededly apply. If the Brotherhood believes that it made a mistake when it accepted the terms of section 17, its remedy is to propose a change in the parties' agreements under section 6 of the Railway Labor Act. And if the Congress is thought to have made a mistake when it enacted section 3 of the Act, the remedy lies with Congress.

5. *A supposed "period of confusion" does not relieve the Brotherhood of complying with its own agreement.* The Brotherhood contends (pp. 39-40) that it would be "ridiculous" to apply the 60-day time limitation prescribed by section 17 for the initial presentation of claims to claims involving the Award, because (the Brotherhood asserts) there was a period of "confusion" when top carrier and union officials were in disagreement as to the meaning of the Award in certain respects, and because application of the time limit allegedly would bar large numbers of claims which were not presented in the prescribed fashion. However, it is just such disagreements between carrier and union officials as to the meaning of railroad work rules which give rise to run-of-the-mill section 3 claims based upon alleged violations of contracts, yet the "confusion" resulting from such disagreements has never been considered a sufficient objection to requiring prosecution of such claims "in the usual manner." And, while the record contains nothing to support the Brotherhood's assertion that large numbers of claims would be barred by application of section 17, the record does show that the Brotherhood *has* presented a large number of claims based upon alleged Award violations in the manner prescribed by the grievance procedure (J.A. 254-255, 257, 258, 279-280, 281-282, 283-284, 285). In short, like its contentions as to "futility," the Brotherhood's contention that it would be "ridiculous" to

apply section 17 to these claims is simply an attack on its own agreement, and its subordinate contention that many such claims would be barred by application of the prescribed time limit is simply a criticism of the diligence of its own officers.

6. *The Brotherhood's other arguments are not responsive to appellants' contentions.* The remainder of the Brotherhood's brief is devoted to a short passage (pp. 41-42) in which the Brotherhood asserts that the court below had jurisdiction to entertain the claims here in question because it has jurisdiction to enforce its judgment, which fails entirely to address our contentions in that regard, and to an attempt to demonstrate (pp. 42-49) that the doctrine of election of remedies as expounded in American Jurisprudence—a doctrine on which we do not rely—is not applicable to the claims here involved. With respect to these points we deem it sufficient to refer the Court to pp. 4-5, *supra*, and pp. 39-43 and 43-47 of our opening brief.

Conclusion

For the reasons stated above and in our opening brief, the orders appealed from should be reversed.

Respectfully submitted,

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APPELLEE'S BRIEF

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,378

SOUTHERN PACIFIC COMPANY, ET AL., *Appellants,*
United States Court of Appeals
for the District of Columbia Circuit
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEERS,
FILED DEC 6 1966 *Appellee.*

Matthew J. Russell
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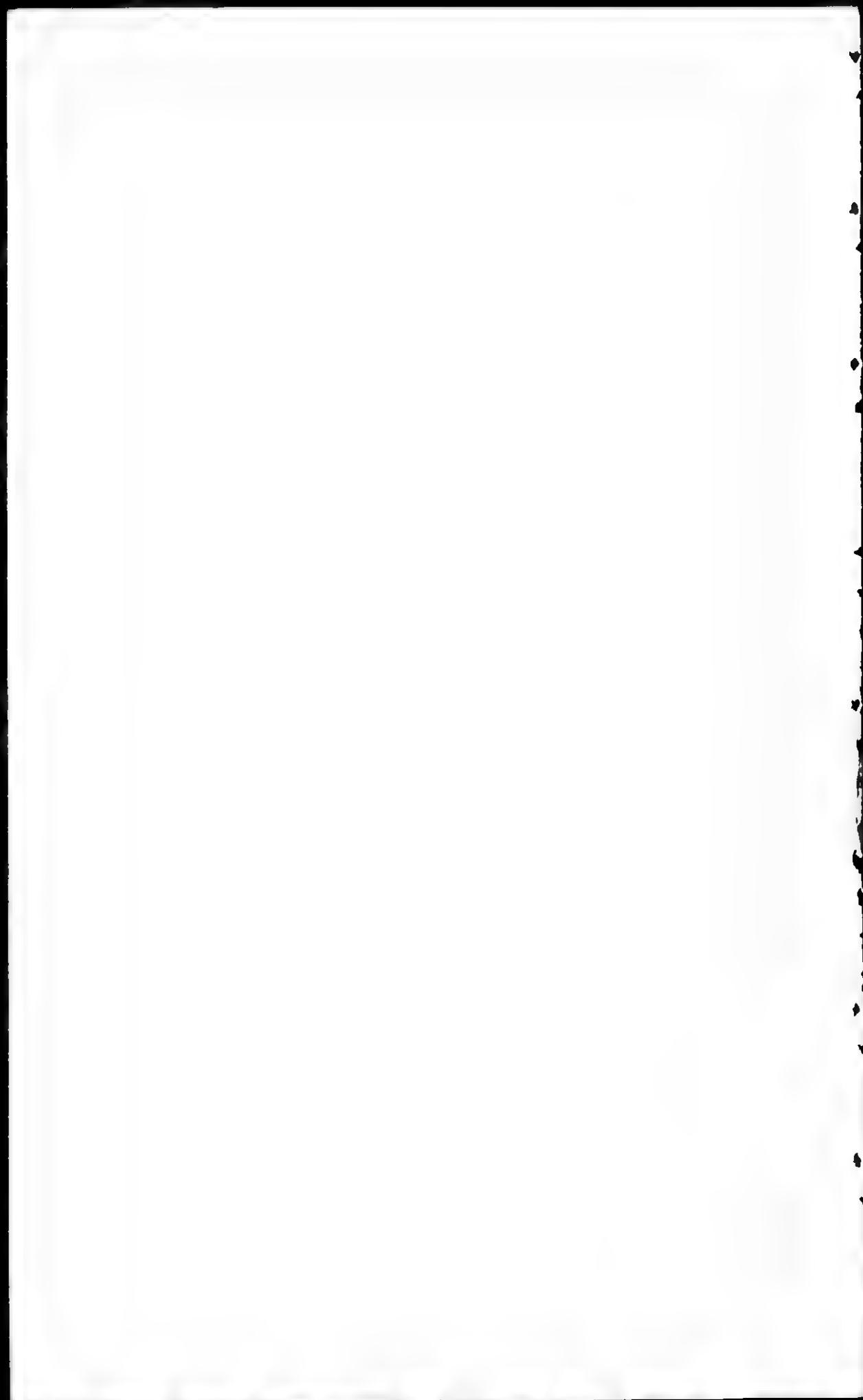
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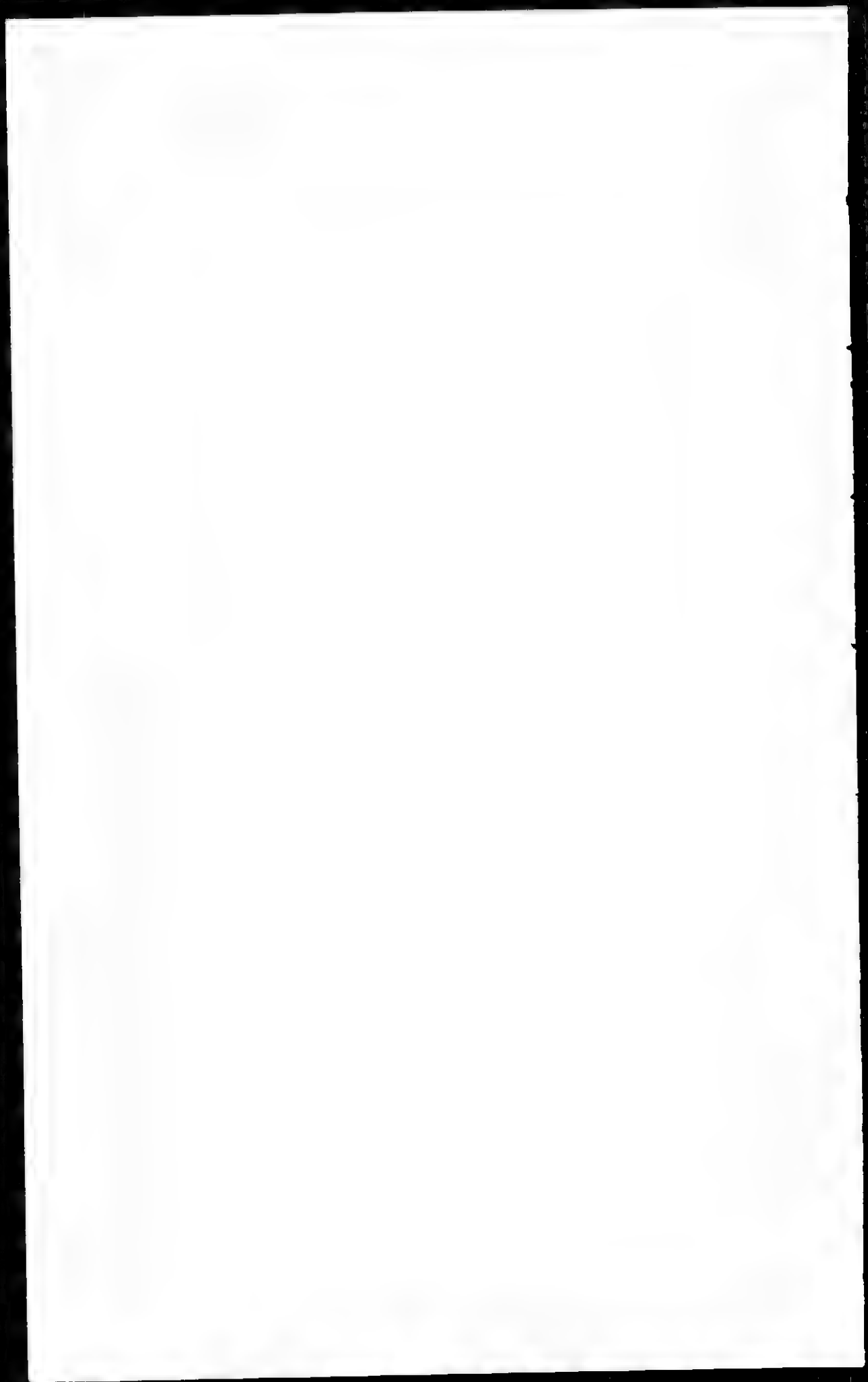
QUESTIONS PRESENTED

In the opinion of the appellee, the questions are:

1. Whether the District Court had jurisdiction to determine the rights of employees represented by the appellee, and to order appropriate relief, for injuries resulting from alleged violations and misapplications by the appellants of the Award of Arbitration Board No. 282 and the judgment rendered thereon by the District Court, or whether, such claims were within the jurisdiction of the National Railroad Adjustment Board and the procedures prescribed by Section 3 of the Railway Labor Act (45 U.S.C. § 153).

2. Whether the District Court invaded the jurisdiction of the National Railroad Adjustment Board when it ruled that compliance with the Section 17 grievance procedure was not obligatory, and that it had jurisdiction over the subject matter of the proceeding.

3. Whether a fireman (helper) makes an election of remedies, and thereby precludes resort to the District Court for the protection of his employment rights under the Award of Arbitration Board No. 282, when he files a time claim or grievance with the timekeeper or other local carrier official.



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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,378

SOUTHERN PACIFIC COMPANY, ET AL., *Appellant*,

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,
Appellee.

On Appeal from Order of the United States District Court
for the District of Columbia

APPELLEE'S BRIEF

COUNTER-STATEMENT OF THE CASE

A nation-wide collective bargaining movement was initiated on November 2, 1959, by substantially all of the major railroads in the country (approximately 160 in number) by serving collective bargaining notices pursuant to Section 6 of the Railway Labor Act (45 U.S.C. Sec. 156) on the Brotherhood of Locomotive Firemen and Enginemen and the four other national transportation brotherhoods. The instant proceeding is concerned only with the Section 6 notice that proposed elimination of certain rules in the firemen's schedule agreements as then in effect on all railroads participating in the national movement. The notice proposed that the Brotherhood of Locomotive Firemen and Enginemen (hereinafter sometimes referred to as the "Firemen's Brotherhood") agree that railroad managements

would have the unrestricted right, under all circumstances, to determine when and if and where a fireman (helper) would be used as a member of the locomotive crew in freight service and in terminal switching operations.

The Firemen's Brotherhood opposed the carriers' proposal. Had the Brotherhood agreed to the proposal, labor relations between the railroads and the employees comprising the firemen's craft would have reverted to substantially the same conditions that existed prior to the time that collective agreements were negotiated by the Firemen's Brotherhood with the major railroads to establish the rules of employment and working conditions governing the employment of locomotive firemen. The procedures prescribed by the Railway Labor Act for the settlement of disputes over proposed changes in employees' rates of pay, rules, or working conditions were exhausted without settlement of the carriers' proposal. As the carriers approached the point of putting the terms of their November 2, 1959, notice into effect, scheduled for August 16, 1963, and as the craft of locomotive firemen (helpers) prepared to resist the carriers' declared intentions, Congress took steps to prevent a nation-wide conflict between the railroads and their employees by prohibiting the parties on either side from resorting to self-help and by imposing for the first time compulsory arbitration of a nation-wide dispute between the railroads and their employees. *Brotherhood of Locomotive Engineers, et al. v. Baltimore & Ohio RR.* 372 U.S. 284. The result was the enactment of Public Law 88-108 (77 Stat. 132) (1963). Public Law 88-108 ordered the establishment of Arbitration Board No. 282. The Board was to consist of seven members. Four of the members were to be partisan members, two to be appointed by the five transportation brotherhoods and two to be appointed by the carriers. There were to be three neutral members.

One of the neutral members appointed to the Board to be its chairman is a professional arbitrator, Mr. Ralph T. Seward. He had had virtually no previous arbitration experience in the railway industry. The other two neutral members are university professors. One is Mr. James J.

Healy, a member of the faculty of the Harvard School of Business Administration. The other neutral member is Mr. Benjamin Aaron, a professor of law at U.C.L.A. The neutral members were, of course, the architects of the plan for the settlement of the firemen's dispute that became the Arbitration Award and will sometimes be referred to herein as "Award 282." These are considerations that bear upon the principal argument advanced by the appellants in support of their appeal.

The Award issued by Arbitration Board No. 282 went into effect, insofar as the firemen's craft is concerned, on May 7, 1964, and various railroad managements promptly demonstrated to the Brotherhood's general chairmen that they would interpret and apply the provisions of the Award according to their own judgment and understanding, without consultation with the general chairmen or otherwise giving consideration to the views of the Firemen's Brotherhood concerning the proper interpretation and application of the provisions of the Award. Manifestly, if the members of the firemen's craft were to be protected from what the Firemen's Brotherhood believed in many instances to be clearly wrongful applications of the Arbitration Award, forceful resistance of the carriers' intentions was essential. A resort to strike threats and strike action was the only power available to protect the firemen's (helpers') employment rights as the Brotherhood conceived them to be under the terms of the Arbitration Award. Such threats provided the basis for the 160 carriers, represented by the Eastern, Western, and Southeastern Carriers' Conference Committees, to apply to the District Court where the Arbitration Award had been made the subject of a judgment on February 28, 1964 (J.A. 13), pursuant to the requirement of Public Law 88-108, for a permanent injunction to prevent the firemen's craft and the Firemen's Brotherhood from calling or instigating or encouraging a strike or other form of work stoppage in protest against the carriers' applications of the Award.

The Brotherhood responded with a countermotion for injunctive relief, by which the Brotherhood sought an order directed at the carriers requiring them to properly enforce

and comply with the terms of the Arbitration Award. The District Court declined to grant the Brotherhood's counter-motion, but it did enjoin the Firemen's Brotherhood and the firemen's craft from engaging in any form of strike action or picketing "over any dispute as to the meaning or application of the Arbitration Award on which judgment heretofore has been entered in this proceeding." (J.A. 19).

The District Court, speaking through Judge Alexander Holtzoff, did not, however, leave the firemen (helpers) completely to the whims of the railroad management's notions regarding the enforcement of the Arbitration Award. In the course of an oral opinion announced from the Bench, Judge Holtzoff made the following declarations:

"The Award is final and binding on both sides and must be obeyed by all parties. Since it was conducted under the aegis of Congress the Award became part of the law of the land. * * *

"However, if any questions of interpretations or construction of the terms of the Award arise they can be determined in the first instance by the Arbitration Board and then recourse to the Courts. * * *

"If the railroads take any step in carrying out the Award which later turns out to be erroneous, any employee who has been damaged in the meantime must receive full restitution. There is no question that would be the legal obligation of the railroads if such situation arises. * * *

"So I repeat that many aspects of this Award are highly favorable to the employees. From the standpoint of the economy of this country it is probably a desirable provision because it would be disastrous to have thousands of unemployed cast upon the community.

"Suppose the opposite occurs. Suppose the railroads were to say that they refused to carry these thousands of persons on their payroll for years to come and refused to comply with the Award. The Court would not tolerate such a defiance and would compel them to comply." (299 F. Supp. 259)

Consistent with such assurance that the railroads would be answerable to the Court if they took steps to carry out the Award in ways that were erroneous—that employees

would "receive full restitution"—the injunction issued on May 11, 1964, against the Firemen's Brotherhood contained a final paragraph in which the District Court—

"reserves jurisdiction for the purpose of enabling any of the parties to this proceeding, or any person that may or may hereafter become bound in whole or in part by this order, to apply to this Court at any time for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this order or of the judgment heretofore entered in this proceeding upon the Award by Arbitration Board No. 282, or any obligation resulting therefrom." (J.A. 19) (Emphasis added)

The Firemen's Brotherhood came out of the District Court proceedings with the understanding that there was one door in the land that stood at least partially open, through which it could return and properly invoke the power of the courts to compel carriers to comply with the terms of the Arbitration Award, or to compel them to refrain from using the Award as an excuse for denying to employees the benefits of employment rules and working conditions established by rules contained in the firemen's collective agreements and long-established practices thereunder.

Disputes promptly developed following the entry of the injunction on May 11, 1964, between the Brotherhood's general chairmen on the railroads of the country and railroad managements involving many aspects of the enforcement of the Arbitration Award. Railroad managements were promptly challenged by the general chairmen when the carriers' actions appeared to be violative of the terms of the Arbitration Award or they violated schedule rules or working conditions and the established practices thereunder and the Award did not appear to authorize such violations. The protests against the carriers' actions would take either of two forms. The complaint would in many instances be a direct communication from the chairman to the railroad's top official in charge of personnel, particularly if the action complained of had been inaugurated by the management announcing by bulletin or other direct form of communication to the general chairman and to local chair-

men that henceforth a certain procedure would not be followed, or that a new procedure would be inaugurated. (As illustrations, see J. A. 114, para. 8, and J. A. 104, para. 8)

On other occasions the carrier's violation of a fireman's employment right under the Award, or the violation of an employment right under a long-established schedule rule, would be challenged by filing with the carrier a specific claim on behalf of an individual to illustrate the action on the part of the carrier that was considered to be unauthorized by the Award. (As an illustration, see the exchange of correspondence between General Chairman A. C. Byron directed to Mr. L. C. Albert, Manager of Personnel on the Southern Pacific Company's Texas and Louisiana lines, and Mr. Albert's answer disclaiming that the carrier's failure to call C(7) firemen to work on blankable assignments and his resultant loss of a day's wages was not a violation of the Award and the Board of Arbitration's ruling in answer to BLF&E Question No. 60(B)). (J.A. 230-233)

The proceeding in the District Court from which the instant appeal stems did not rest merely upon two kinds of Arbitration Award violations by the Southern Pacific Company and involve only wage claims for a total of 37 days, asserted on behalf of fifteen firemen (helpers). The proceeding in the District Court was based upon a uniform stand taken by substantially all of the 160 carriers that were parties to the Arbitration Award as a defense against the claims and grievances that were being pressed against the carriers based upon the carriers' various kinds of violations and misapplications of the Arbitration Award. The stand taken by the carriers was that they would refuse to make appropriate amends of valid claims and grievances resulting from the enforcement of the Arbitration Award unless each individual claim or grievance was filed and processed within the time and in the manner prescribed by a plan of grievance processing procedure set forth in Section 17 of a certain national agreement dated August 11, 1948, that had been entered into by the carriers and the Firemen's Brotherhood and two other railway labor organizations. The carriers first took their stand on this subject

beginning in February, 1965 (J. A. 174-177; 250, paras. 6 and 7).

The carriers' defense based upon the Section 17 grievance procedure had to be resolved and disposed of if the firemen (helpers) employed by the railroads of the country were to receive any redress for the wages and jobs they had been wrongfully deprived of by the carriers' wrongful applications of the Arbitration Award. And so under date of December 1, 1965, the Brotherhood filed in the District Court a Motion for Supplemental Relief against the Southern Pacific Company and all other carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees. That motion set forth in detail the stand that the carriers had taken relative to the Section 17 defense being a valid reason for refusing to pay or satisfy valid claims and grievances growing out of the carriers' wrongful applications of the Arbitration Award. The motion asserted that the Brotherhood has never recognized that "the time limits and the system of appeals established by Section 17 of the August 11, 1948, national agreement . . . have any application to or bearing upon the carriers' duty to satisfy valid claims and grievances growing out of violations of the Arbitration Award by the carriers, or upon the right of the Brotherhood to apply to this Court for orders requiring carriers to carry out or enforce the judgment entered in this proceeding on May 11, 1964, upon the Award by Arbitration Board No. 282 and the legal obligations therefrom." (J. A. 247)

The prayer for a ruling by the Court on the validity of the carriers' Section 17 defense was a prayer for a general ruling on the subject. It asked the Court to declare—

"that the right of the Brotherhood and of the locomotive firemen (helpers) it represents to require the carriers party to the above-entitled proceeding to comply with the judgment entered in that proceeding upon the Award by Arbitration Board No. 282 is not conditioned by the terms of the national agreement of August 11, 1948, and that the carriers are bound to satisfy such valid claims or grievances asserted by the employees, or on their behalf, as result or flow from the carriers' improper interpretations and applications of the Arbitration Award and the judgment based

thereon, without regard to the terms of the collective agreement entered into on August 11, 1948, by and between the Brotherhood and the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees." (J. A. 248)

In order that the Motion for Supplemental Relief would not be subject to challenge on the ground that the Brotherhood was seeking an advisory opinion, the Motion was supported by an affidavit signed by General Chairman Allen C. Byron (J. A. 252). The Byron affidavit set forth, merely by way of illustration, circumstances under which Southern Pacific has refused to pay two groups of valid money claims based upon violations of the Arbitration Award.

After argument was heard on the Brotherhood's Motion for Supplemental Relief, the District Court, speaking through Judge Alexander Holtzoff, rendered an opinion affirming the Brotherhood's position. That opinion recognizes that the Brotherhood's motion posed a general question regarding the compulsory, or non-compulsory, character of the grievance procedure contained in Section 17 of the August 11, 1948, agreement. In sustaining the Brotherhood's position, the District Court appears to have rested its conclusion on two grounds. The first ground is that a collective agreement entered into by private parties in 1948 could not be permitted to condition the circumstances under which the District Court could protect the employment rights of employees based upon the Arbitration Award that had been made the judgment of the District Court, pursuant to Public Law 88-108, on February 28, 1964.

The second ground upon which the District Court rested its decision was that parties to the August 11, 1948, agreement could not, by any reasonable stretch of the imagination, be presumed to have had in mind or contemplated that the grievance procedure agreed upon in Section 17 would encompass the claims and grievances of railway employees growing out of the settlement of a nation-wide dispute that had been imposed upon the railway industry by compulsory arbitration by a special enactment of Congress in 1963. (J. A. 321)

When it came to the District Court entering a decree based upon the Brotherhood's motion, the decree was confined to the specific money claims that were asserted by way of illustration in the Byron affidavit. This was not opposed by Brotherhood counsel because it was consistent with the normal practice of courts to restrict judgments to the actual cases or controversies that are before it (J. A. 329). This matter was the subject of a colloquy between Judge Holtzoff and counsel for the parties when the judgment entered below was signed on April 6, 1966 (J. A. 325). But Court and counsel alike understood that the opinion that the Court had rendered based upon the Brotherhood's motion was a ruling that disposed adversely of the carriers' contention that the Section 17 grievance procedure is a compulsory procedure that must be complied with by all employees asserting claims and grievances based upon the carriers' improper enforcement of the Arbitration Award (J. A. 325-326).

SUMMARY OF ARGUMENT

1. The District Court was correct in holding that it had jurisdiction to determine the rights of employees represented by the appellee, and to order appropriate relief, for injuries resulting from alleged violations and misapplications of the Award of Arbitration Board No. 282 and the judgment rendered thereon by the District Court, and that such determinations were not within the jurisdiction of the National Railroad Adjustment Board under Section 3 of the Railway Labor Act (45 U.S.C. § 153).

The jurisdiction of the Adjustment Board under Section 3 of the Railway Labor Act is limited to determining disputes growing out of the interpretation or application of collective bargaining agreements. The *Slocum* doctrine, enunciated by the Supreme Court in *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239 (1950), which vests the Adjustment Board with exclusive primary jurisdiction to determine such disputes was prompted by the belief that since such agreements were drawn by railroad men, the disputes over the interpretation or application of such agreements should be resolved in the first instance by a

tribunal which has expertise in such matters, namely, the Adjustment Board.

The disputes in the present case, however, do not concern the interpretation or application of any collective bargaining agreement, but instead, involve the interpretation or application of the Award of Arbitration Board No. 282. The substantive provisions of the Award were written by neutral members of the Arbitration Board who, at best, had very limited experience in the field of railway labor relations, and the Award is not written in the usual jargon of railroad agreements. The *Slocum* doctrine, therefore, is not applicable in this case and there is no reason to withhold jurisdiction from the District Court which entered the judgment upholding the validity of the Award.

Furthermore, the jurisdiction of the Adjustment Board is limited to interpreting collective bargaining agreements, and does not extend to arbitration awards. Section 8 of the Railway Labor Act (45 U.S.C. § 158) provides that disputes arising over the application of the provisions of an arbitration award be referred to the board of arbitration which issued the award. Public Law 88-108 pursuant to which Arbitration Board No. 282 was convened, specifically directed that the Arbitration Award be subject to Section 8 of the Railway Labor Act. The Adjustment Board, accordingly, does not have jurisdiction to interpret the Award of Arbitration Board No. 282. And even if the Adjustment Board does have jurisdiction to interpret awards of arbitration boards established by agreement, Arbitration Board 282 was not such a board.

Moreover, even if the Adjustment Board would have jurisdiction over the disputes involved in this case, the appellee nevertheless was not obliged to utilize that administrative procedure since such procedure would have been an exercise in futility. The Supreme Court has held that even when the Adjustment Board has issued an award and order in favor of a claimant, the claimant's sole recourse to enforce the award, if the carrier refuses to comply therewith, is to institute an enforcement suit in a District Court. The highest echelon of the appellants made it clear to the appellee that they believed their position to be supported

by the Award of Arbitration Board No. 282 and that they had no intention of recognizing the claims of appellees until ordered to do so by a court. To obtain awards of the Adjustment Board covering the claims involved in the present case would take a minimum of seven years. The appellants' adamant position leaves no doubt that they would not voluntarily comply with such awards, and that even at that point, the appellee still would be required to institute a suit in a district court to obtain relief. In such suit, the same issues, presented to and passed upon by the Court below, would determine the appellee's right to relief.

2. The District Court did not invade the exclusive jurisdiction of the National Railroad Adjustment Board when it ruled that compliance with the grievance procedure set forth in Section 17 of an agreement between the parties entered into on August 11, 1948, as part of an agreement establishing basic daily rates of pay for firemen, was not obligatory. The Court did not interpret the provisions of Section 17 of the parties' agreement. It held only that Section 17 was not applicable to deprive it of jurisdiction to determine the proceeding instituted by the appellee. The issue of whether the Court has jurisdiction over the subject matter of the proceeding obviously is one over which the Court has exclusive primary jurisdiction; certainly, the determination of such issue does not rest within the jurisdiction of the National Railroad Adjustment Board.

3. The District Court correctly held that the doctrine of election of remedies has no application in this case, and that employees represented by appellee could seek relief in the Court below even though they may have taken an initial step which conformed with the grievance procedure of Section 17. The election of remedies doctrine is applicable only in situations in which there exist two or more remedies, the remedies are inconsistent, and the party has made a choice of one of them. None of these prerequisites is present in this case.

ARGUMENT

I. THE MONEY CLAIMS AND LOSS OF RIGHTS TO EMPLOYMENT THAT RESULTED FROM THE ALLEGED VIOLATIONS AND MISAPPLICATIONS BY THE CARRIERS OF THE ARBITRATION AWARD RENDERED BY ARBITRATION BOARD NO. 282 WERE NOT SUBJECT TO THE JURISDICTION OF THE NATIONAL RAILROAD ADJUSTMENT BOARD AND THE PROCEDURES PRESCRIBED BY SECTION 3 OF THE RAILWAY LABOR ACT (45 U.S.C. SEC. 153).

We believe a court cannot render a just and sound decision on the question whether the Section 17 grievance procedure established by the August 11, 1948, collective agreement is an obligatory process applicable to all individual money claims and grievances growing out of the violations and misapplications of the Arbitration Award without having a realistic comprehension of the magnitude of the project that would result if the Section 17 procedure were held to be obligatory. We emphasized earlier in the counter-statement of this case that the judgment upon which this appeal is based refers to only two kinds of Arbitration Award violations. They were violations of a kind that occurred infrequently. The first kind of violation involved the use by a yard crew of a multiple-section Diesel locomotive to break up and reassemble a long freight train upon its arrival at a terminal while enroute to the train's destination. The train would be broken up at a terminal to set out the cars that were to be left at the terminal where the switching was being done. The train would then be reassembled after adding to it the freight cars that were ready to be forwarded to other terminals ahead. The freight locomotive was used by the yard crew in lieu of the customary yard switching locomotive because the latter was not powerful enough to handle the long sections of freight cars involved in the breaking-up and reassembling process. The freight locomotive was operated with only one engineer in control of its operation while performing the switching operation, and the freight locomotive was not equipped with a dead-man control. A fireman was available and ready to work as a member of the engine crew, but the management simply refused to call him to work. The operation of the freight locomotive under these circumstances without a fireman (helper) was a violation of the Arbitra-

tion Award. The claims listed in the Byron affidavit of December 1, 1965, which Southern Pacific refused to pay because the claims had not been processed through the Section 17 procedure, were claims on behalf of five available firemen, and involved pay claims for a total of 27 days (J. A. 255).

The second type of violation listed in the Byron affidavit was based upon the operation of a local freight locomotive known as the "Orange Switcher." The management had not listed this assignment under Part B(1) or B(3) of the Award as an operation that did not, in the judgment of the management, require the services of a second engineman in the cab of the locomotive. Since this assignment had not been listed as a blankable assignment by the carrier, the Arbitration Award required that a fireman be assigned as a member of the locomotive crew. Regardless of these circumstances, Southern Pacific chose to operate the locomotive without a fireman (helper). The money claims listed in the Byron affidavit of December 1, 1965, were asserted on behalf of five firemen (helpers) and the amount involved was pay for a total of 15 days. Southern Pacific refused to pay the claims because they had not been appealed and processed within the time and in the manner required by the Section 17 procedure (J. A. 258).

We now invite the Court's attention to the Byron affidavit of February 11, 1965. (J. A. pp. 27-172). That affidavit is 145 pages in length. It lists approximately 940 individual money claims and grievances. It is based upon nine different categories of alleged Arbitration Award violations and misapplications. The violations listed occurred in a six-month period—from mid-May to mid-December of 1964—and the list of violations does not purport to be complete. The 940 claims and grievances arose on only that portion of the Southern Pacific's lines that are located in the States of Texas and Louisiana. The Southern Pacific's lines in Texas and Louisiana comprise six firemen's seniority districts. The Southern Pacific Railroad system extends from Seattle, Washington, south through the states of Oregon, California, Arizona, New Mexico, and on east through Texas and Louisiana to New Orleans.

As stated previously, 160 of the major railroads of the country were subject to the Arbitration Award. The management of the Southern Pacific Company is not charged with being the most persistent violator of the Arbitration Award. Nor is it credited with being the least frequent offender. The employees' claims and grievances growing out of the alleged violations and misapplications of the Award on the Texas and Pacific lines of the Southern Pacific Railroad became the subject of the Brotherhood's first Motion for Supplemental Relief filed in the District Court simply because the Brotherhood's general chairman on the Texas and Louisiana Lines was the first general chairman to be prepared with a substantial list of Award violations assembled in a suitable manner to be set forth in an affidavit supporting a Motion by the Brotherhood for Supplemental Relief based upon the third paragraph of the order entered by the District Court on May 11, 1964.

In further illustration of the magnitude of the grievance problem that developed as a result of the carriers being left free to enforce the Arbitration Award according to their own notions and limited only by the capacity of their ingenuity to develop novel interpretations of the Award, the Brotherhood has filed in the District Court below Motions for Supplemental Relief against the Atchison, Topeka and Santa Fe Railway based upon affidavits signed by two general chairmen on that property. The motions are limited to violations committed against only one class of firemen (helpers), viz., firemen (helpers) having two to ten years of seniority and classified as C(6) firemen (helpers). The affidavits list a total of 450 firemen (helpers) who were discharged by the Santa Fe under circumstances that either deprived the firemen (helpers) of earnings they should have been allowed to earn or who were discharged from their employment under circumstances that were clearly in violation of the Arbitration Award and, hence, they were discharged unlawfully.¹

¹ The claims and grievances in one affidavit (the Miller affidavit) involving firemen (helpers) that were employed on the Santa Fe's Lines Proper have been disposed of by settlement. Negotiations are presently under way looking toward a settlement of the claims and grievances of C(6) firemen who were employed on the Coast Lines portion of the Santa Fe Railroad.

The foregoing illustration should enable the Court to form a realistic opinion regarding the magnitude of the grievance problem that developed on the 160 major railroads on which the Arbitration Award was enforced for the two years of its statutorily prescribed period of 11 months. The Brotherhood has made no attempt to ascertain the total number of individual claims and grievances that developed as a result of the violations and improper interpretations of the Arbitration Award on the 160 railroads on which it was enforced. It is evident, however, that to process the claims and grievances of individual firemen (helpers) through the steps contemplated by the Section 17 procedure would have been an utterly impossible task for any railway labor organization to have performed.

In contemplating the appellants' contention that processing the individual claims and grievances that developed as a result of the enforcement of the Arbitration Award within the time and through the appeals contemplated by Section 17 was obligatory, and that a failure to exhaust that procedure relieves the carrier of any obligation to make amends to individual firemen (helpers) for their loss of wages or for being deprived of a job to which they were entitled, the Court needs to have a clear understanding of the process prescribed by Section 17 of the August 11, 1948, national agreement.

That agreement, with the exception of Section 17 (J. A. 264-267), was concerned exclusively with establishing basic daily rates of pay for firemen (helpers), conductors, and switchmen, and with defining the conditions and circumstances under which compensation (normally referred to as "arbitraries") would be paid employees when unusual demands, including overtime service, would be required of employees. The titles of the 16 substantive sections comprising the agreement are set forth at pages 264 and 265 of the Joint Appendix. Section 17 is entitled "Time Limit on Claims." Its provisions are quoted at pages 266 and 267 of the Joint Appendix.

The detailed procedure prescribed by Section 17 for processing grievances will be more readily and accurately grasped if it is summarized as a step-by-step procedure.

This was done in the Lohrke affidavit that was filed by the appellants in the District Court in opposition to the Byron affidavit. We cannot describe more accurately that procedure than to use the Lohrke explanation:

"(i) Ordinarily, claims are made initially on an employee's 'Time Return and Delay Report,' submitted to the carrier's timekeepers. (An example of a Time Return and Delay Report is attached hereto as Exhibit C-1.) In any event, a claim or grievance must be presented in writing within sixty days from the date of the occurrence on which it is based; otherwise it is barred.

"(ii) Claims that are not allowed ordinarily are disallowed with a 'Time Correction Notice,' issued by the timekeeper over the Superintendent's signature. (An example of a Time Correction Notice is attached hereto as Exhibit C-2.) In any event, the carrier has sixty days from the date on which a claim is made to disallow it and send notice thereof to the employee or his representative; otherwise, the claim is considered valid and must be settled accordingly.

"(iii) The claim then may be appealed by the employee's Local Chairman to the Superintendent of the employee's seniority district, within sixty days from receipt of the notice of disallowance; otherwise, the matter is considered closed. (An example of such an appeal is attached hereto as Exhibit C-3.)

"(iv) The appeal then may be disallowed and notice of disallowance given to the Local Chairman within sixty days from the date of the appeal; otherwise, the claim is considered valid and must be settled accordingly. (An example of such a notice is attached hereto as Exhibit C-4.)

"(v) The Superintendent then must be notified by the Local Chairman that his decision is rejected, and the claim must be appealed by the General Chairman to the carrier's Manager of Personnel, all within sixty days from receipt of the Superintendent's decision; otherwise, the matter is considered closed. (An example of a notice that the Superintendent's decision is rejected is attached hereto as Exhibit C-5; an example of an appeal to the Manager of Personnel is attached hereto as Exhibit C-6.)

"(vi) The Manager of Personnel then must notify the General Chairman of his decision within sixty days

from the date of appeal; otherwise, the claim is considered valid and must be settled accordingly. (An example of such a decision is attached hereto as Exhibit C-7.)

"(vii) The General Chairman then must notify the Manager of Personnel that his decision is not accepted within sixty days after written notice of the decision; otherwise, the decision is final and binding. (An example of such a notice is attached as Exhibit C-8.)

"(viii) The General Chairman then must list or 'docket' the claim for conference with the Manager of Personnel. Most claims and grievances not disposed of at an earlier stage in the procedure are settled in such conferences. Following the conference, the Manager of Personnel notifies the General Chairman in writing of his final decision.

"(ix) Thereafter, proceedings may be instituted 'before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved.' Such proceedings must be commenced within six months from the date of the decision of the Manager of Personnel, following the conference, or such extensions of that period as are agreed to by the parties. Otherwise, the claim is barred. Cases which otherwise would be submitted to the National Railroad Adjustment Board (45 U.S.C. Sec. 153) may be and always are submitted, with consent of the parties, to a special board of adjustment established by contract between the BLF&E and the carrier. Unlike the National Railroad Adjustment Board, the parties' special adjustment board keeps its docket current."

The Court will observe that the Section 17 grievance procedure is initiated by an employee recording his time claim or grievance on a form provided by the carrier. The form is generally referred to as a "Time Return and Delay Report." That form is customarily filed by the employee with a local clerk known as a "timekeeper."

Claims or grievances must be filed by the employee with the timekeeper *"within sixty days from the date of the occurrence on which it is based."* Otherwise the claim or grievance is barred.

The final step in the grievance procedure, assuming the carrier's manager in charge of personnel declines the claim

or grievance, is to appeal the claim or grievance *within six months* from the date of the decision by the manager of personnel to "a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance" (J. A. 266). The tribunal thus referred to is understood by managements and employees alike to be the National Railroad Adjustment Board, or other tribunal having similar jurisdiction and authorized by Section 3 of the Railway Labor Act.²

Perhaps we should add that submitting claims and grievances to the National Railroad Adjustment Board was the last step in the grievance procedure established by Section 17 was true until the Supreme Court rendered its decision in the case of *Brotherhood of Locomotive Engineers, et al. v. Louisville & Nashville Railroad Company*, 373 U.S. 33 (1963). That decision established the proposition that enforcement of Adjustment Board awards by prosecuting enforcement proceedings in the federal courts pursuant to Section 3, First (p), of the Railway Labor Act, is an inte-

² The appellants refer at pages 4 and 5 of their brief to a disputes committee that was established by a national agreement dated June 29, 1949, to which the Firemen's Brotherhood was a party. The stated purpose of that committee is to try to settle any dispute or controversy arising in the course of applying the wage and compensation provisions of the August 11, 1948, national agreement. The committee consists of six persons, three being appointed by the labor organizations and three by the carriers. There is no provision for a neutral to be appointed to break the committee's deadlocks. The 1949 agreement provides that disputes may be referred to the disputes committee of six persons as an additional step before the disputes are referred to the National Railroad Adjustment Board, and if the committee deadlocks over a dispute, it may thereafter be referred to the National Railroad Adjustment Board. We fail to see what relevance the 1949 agreement has to the issue before this Court. The jurisdiction of the disputes committee is restricted to disputes involving enforcement of wage rates and the arbitrary compensation provisions of the 1948 agreement. If the appellants' contention is that firemen's claims and grievances growing out of Arbitration Award violations may not be submitted to the District Court but must be processed through the Section 17(c) procedure, as apparently modified by the 1948 agreement, the appellants are apparently contending, in effect, that a tribunal of laymen established by an agreement between the carriers and the railway labor organizations is the proper tribunal to decide the question of law whether the District Court may compel the carriers to comply with the judgment entered by the District Court based upon the Arbitration Award. If that is the appellant's contention, it is the first time the appellee has heard the argument that a tribunal of laymen has been vested with authority to decide questions regarding a Federal Court's jurisdiction.

gral and mandatory part of the grievance procedure established by Congress for the disposition of disputes growing out of the interpretation and application of collective agreements in the railway industry.

We come now to a consideration of the principal reason advanced by the appellants in support of their contention that the District Court should have held that employees' claims and grievances resulting from the carriers' violations and improper applications of the Arbitration Award must be processed within the time and through the appellate procedure prescribed by Section 17, or the claim and grievance must be held to be barred. The appellants' line of reasoning in drawing that contention is simple. It is to the effect that "the work rules established by Award 282 do not differ in either form or substance from those which might have been made by agreement among the parties." That is to say, "individual claims for violations of Award 282 are not significantly different from the kinds of claims which are the 'grist' of the 'minor' disputes procedure of Section 3 of the Railway Labor Act." Hence, individual claims resulting from carriers' violations and misapplications of Award 282 must be held to be "minor" disputes. They clearly do not fit the category of "major" disputes. The Railway Labor Act contemplates that all "minor" disputes in the railway industry are subject to the jurisdiction of the National Railroad Adjustment Board. *Ergo*, the National Railroad Adjustment Board has exclusive jurisdiction to decide disputes resulting from the enforcement of Award 282, and this conclusion negates the District Court's asserted jurisdiction to resolve claims and grievances resulting from the enforcement of Award 282. (Appellants' brief, pages 22 to 27.)

The proposition as thus asserted by the appellants deserves a comment similar to that made by Circuit Judge Brown in a recent case involving a question of Federal jurisdiction over actions to enforce employment rights stemming from a collective agreement applicable to the railway industry. The District Court had dismissed the complaint on the ground that it involved no more than an attempt to enforce contract rights and did not pose a ques-

tion of federal law. On appeal to the Fifth Circuit, two judges joined to render the majority decision which affirmed the judgment of the District Court. Circuit Judge Brown began his dissenting opinion with the following observation:

"It is a paradox that the strength of the Court's opinion is that *the result does not make sense.*" (*International Assoc. of Machinists v. Central Air Lines, Inc.*, 295 F. 2d 209, at 220.) (Emphasis added.)³

We will suggest a number of reasons why we believe the proposition of law urged upon this Court by the appellants does not make sense.

Disputes Involving the Interpretation or Application of Arbitration Awards Do Not Belong in the "Minor" Disputes Category.

There is no responsible authority for the proposition that *all* labor disputes in the railway industry must either fit the category of "major" disputes, or they must be classified as "minor" disputes and must necessarily be subject to the exclusive jurisdiction of the National Railroad Adjustment Board.

The terminology, "major" disputes and "minor" disputes, does not stem from the Railway Labor Act. The terminology stems from a scholarly analysis of the Railway Labor Act and the history of labor relations in the railway industry set forth in the case of *Elgin, Joliet & Eastern Railway v. Burley*, 325 U.S. 711 at 722 to 725 (1945), in which Mr. Justice Rutledge spoke for the majority of the Court.

The definition and discussion of "minor" disputes presented by the decision in the *Burley* case is confined exclusively to *disputes involving the interpretation and application of collective agreements*. The *Burley* case makes no reference to the arbitration provisions of the Railway Labor Act. It makes no attempt to categorize disputes concerned with the interpretation or application of arbitration awards.

³ Neither did the Supreme Court think that the Court of Appeals' decision made sense. It reversed the ruling by the Court of Appeals in a unanimous decision. (372 U.S. 956)

The appellants' line of reasoning in reaching the conclusion that disputes over rights based upon arbitration awards are to be decided exclusively by the National Railroad Adjustment Board is not persuasive. It begins with the premise that collective agreements in the railway industry are concerned with establishing "rates of pay, rules, or working conditions."

Disputes concerned with the interpretation and enforcement of rates of pay, rules, or working conditions as contained in collective agreements are subject to the exclusive jurisdiction of the National Railroad Adjustment Board. Hence, similar disputes over similar subjects involved in Award 282 must also be subject to the exclusive jurisdiction of the National Railroad Adjustment Board. And, therefore, courts are without authority to decide such disputes.

The conclusion the appellants thus reach is faulty, because neither the enactments of Congress nor the decisions of the courts have established a basis in the law for the conclusion that the appellants reach.

The appellants seek to bolster their major proposition by asserting the following:

"The rules established by Award 282 are written in the same language and employ the same concepts as a collective bargaining agreement." (Appellants' brief, p. 26.)

That statement is demonstrably untrue and equally irrelevant.

The National Railroad Adjustment Board did not acquire its exclusive jurisdiction over disputes involving the interpretation and application of collective agreements in the railway industry by the Congress declaring that it should be vested with such jurisdiction. The Board acquired its exclusive jurisdiction over schedule disputes as a result of the Supreme Court's decisions in *Order of Railway Conductors v. Pitney*, 236 U.S. 561 (1945); *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239 (1950); and *Order of Ry. Conductors v. Southern Railway Company*, 339 U.S. 255 (1950).

The doctrine established by those decisions is to the effect that courts should refrain from deciding disputes that turn upon the proper interpretation and application of collective

agreements applicable to the railway industry until after the Adjustment Board has had the opportunity to resolve such disputes by the application of its expertise. The establishment of that doctrine (commonly referred to as "the *Slocum* doctrine") was prompted by a realization that men who devote their working lives to operating the trains and the terminal facilities of the railway industry work in an environment which has a tradition and a language quite unlike any other in American industry. Mr. Justice Black, speaking for the majority of the Court in the *Slocum* case, recognized the unique environment of railway labor disputes when he explained the reason for the Court's establishment of the *Slocum* doctrine, as follows:

"* * * The Adjustment Board is well equipped to exercise its congressionally imposed functions. Its members understand railroad problems and speak the railroad jargon. Long and varied experiences have added to the Board's initial qualifications. Precedents established by it, while not necessarily binding, provide opportunities for a desirable degree of uniformity in the interpretation of agreements throughout the nation's railway systems.

"The paramount importance of having these chosen representatives of railroads and unions adjust grievances and disputes was emphasized by our opinion in *Order of Conductors v. Pitney*, supra. There we held, in a case remarkably similar to the one before us now, that the Federal District Court in its equitable discretion should have refused 'to adjudicate a jurisdictional dispute involving the railroad and two employee accredited bargaining agents * * *.' Our ground for this holding was that the court 'should not have interpreted the contracts * * *' but should have left this question for determination by the Adjustment Board, a congressionally designated agency peculiarly competent in this field.'" (339 U.S. 239, at 243.)

The technical character of the rules that characterize the schedule agreements among the railroad transportation crafts, and the kind of disputes that develop from those rules, are illustrated by the facts and issues that were involved in such cases as *Brotherhood of Locomotive Engineers v. Chicago, Milwaukee, St. Paul and Pacific Railroad*,

41 F. Supp. 751 (1941), and *Jefferson v. Atlantic Coast Line R.R. Co.*, 303 F. 2d 522 (C.C.A., 5th, 1962). The *Slocum* doctrine is a sound doctrine, but the administration of Award No. 282 provides no occasion for the application of that doctrine.

It is true that on many occasions the railroads ceased complying with long-established rules in the firemen's schedule agreements, and when the propriety of the carriers' actions was challenged the carriers' inevitable answer was that the rule had been abrogated by Section II of the Arbitration Award. No dispute developed regarding the meaning of the rule nor the established manner in which it had long been applied. The dispute that developed was always concerned with how railroad management could find in the provisions of Award 282 authority for the conclusion that the Award had abrogated the rule that the carrier had ceased to comply with. It was circumstances of this nature that led to the disputes set forth in Parts I, III, IV, VIII, and IX of the Byron, February 11, 1965, affidavit. (J. A. 28, 109, 127, 163, 169.)

The substantive provisions of the Arbitration Award were written by two college professors and a professional arbitrator, no one of whom had previously had more than a very limited experience in the field of railway labor relations. The language of Award 282 is not written in the terse "railroad jargon" referred to by Mr. Justice Black in the *Slocum* case. The neutral members of Board 282 did not bring to the tremendous task of deciding the firemen's issue the expertise that is rightfully attributed to the members of the National Railroad Adjustment Board. They brought to the task brilliant intellects and skill in the use of commercial language. So do judges of the Federal judiciary.

The labor and carrier members of the Adjustment Board would have been as confused and as deeply involved in disagreements over the proper administration of the Arbitration Award as were the officers of the Firemen's Brotherhood and the officers of the Carriers' Conference Committees. Disputes between the Brotherhood and the Carriers' Committees raged continuously throughout the two years

that the Award was in effect. And in the course of that time the members of the Arbitration Board were reconvened fourteen times to settle disputes, and more than 200 interpretations of the Award applicable to the firemen's craft were issued by the Board.

We submit that the contention advanced by the appellants that the National Railroad Adjustment Board would have been a competent tribunal to resolve the disputes that developed during the two years that the Arbitration Award was enforced simply has no basis in fact.

The Railway Labor Act Provides a Clear Differentiation Between the Method of Resolving Disputes Based Upon Arbitration Awards and the Resolving of Disputes Based Upon Collective Agreements.

The appellants' contention to the effect that the firemen's (helpers') claims and grievances resulting from violations and misapplications of the Arbitration Award should be processed through the Section 17 procedure and ultimately land before the National Railroad Adjustment Board for decision is not supported by the provisions of the Railway Labor Act, nor by any court decision of which we are aware.

The idea that the Adjustment Board has jurisdiction to resolve disputes based upon arbitration awards runs contrary, we submit, to the arbitration provisions in the Railway Labor Act.

Congress declared in Section 4 of Public Law 88-108 that "the arbitration shall be conducted pursuant to Sections 7 and 8 of the Railway Labor Act, the board's award shall be made and filed as provided in said sections and shall be subject to section 9 of said Act." (Appellants' brief, p. 51.)

Section 8 of the Railway Labor Act prescribes in detail the terms that agreements to arbitrate shall contain. One contract provision, set forth in paragraph (m), reads as follows:

"The agreement to arbitrate— * * * (m) shall provide that *any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a sub-*

committee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; * * *." (Appellants' brief, p. 62.) (Emphasis added.)

The inclusion of paragraph (m) of Section 8 in agreements to arbitrate is obviously mandatory. That is to say, when parties elect to submit a dispute to an arbitration board established pursuant to Sections 7 and 8 of the Railway Labor Act, one of the parties does not have the right to thereafter elect to submit a dispute based upon the terms of the award to the National Railroad Adjustment Board for decision. The authority to entertain and resolve such disputes is, we have always understood, vested exclusively in the arbitration board, or a subcommittee of that board. And we submit that paragraph (m) of Section 8 must be understood to vest in Arbitration Board No. 282, not in the National Railroad Adjustment Board, exclusive authority to resolve "differences arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration (Award 282)." (Appellants' brief, p. 62.)

We do not find among the cases cited by the appellants in support of their major contention any instance in which a court held that a dispute as to the meaning or proper application of an arbitration award may be submitted to the National Railroad Adjustment Board by one or both of the parties. An issue fairly close to that question was presented for decision in one case, but that case is not referred to by the appellants. We refer to *Order of Railroad Telegraphers v. New York Central Railroad Company*, 181 F. 2d 113. (C.C.A., 2nd) (1950), cert. denied, 330 U.S. 818.)

In the *Telegraphers* case the union had proposed to the New York Central that new rules applicable to the employment of telegraphers be agreed upon and incorporated into the telegraphers' schedule agreement. Agreement was reached upon a number of rules, but there were seven proposed rules that the carrier refused to agree to. The parties were thereafter persuaded by the National Mediation Board

to settle the dispute over the seven rules by submitting the dispute to arbitration in accordance with Section 8 of the Railway Labor Act. A board of arbitration was established, and in due time an award was rendered covering the seven rules in dispute, and the award was filed in the District Court pursuant to Section 9 of the Act. Thereafter the parties incorporated the seven rules established by the award, together with the rules previously agreed upon, into the telegraphers' schedule agreement.

Subsequently the parties found themselves in dispute over the meaning and proper application of two of the seven rules established by arbitration. The New York Central requested the National Mediation Board to reconvene the arbitration board to settle the dispute. That move was opposed by the Telegraphers. The grounds for opposing the reconvening of the arbitration board was summarized by the Court of Appeals as follows:

"It is argued that a separate procedure, culminating in recourse to the Railroad Adjustment Board, is appropriate to disputes involving agreements, as opposed to awards; that the disputed rules ceased to be part of an award and became part of an agreement after July 1, 1948; and that the procedure followed in this case trenches on the province of the Adjustment Board." (181 F. 2d 113, at 116.)

Nevertheless, the board of arbitration was reconvened, hearings were held, and the dispute was resolved. The Telegraphers then moved, pursuant to Section 9 of the Railway Labor Act, to impeach the interpretation rendered by the reconvened board. The carrier moved to dismiss the Telegraphers' petition. The carrier's motion was sustained, and on appeal the ruling by the District Court was affirmed by the Court of Appeals for the Second Circuit.

The Court of Appeals observed that under Section 8, the parties have the right to fix the period during which an arbitration award shall continue in effect. In this instance the parties had agreed that the award "shall continue in effect in accordance with the provisions of the Railway Labor Act, as amended." That being the agreement, the Court of Appeals was satisfied that the arbitration board

"retained jurisdiction to issue an interpretation covering the meaning and the application of the provisions of its award here in issue, notwithstanding that those provisions had been incorporated into a collective bargaining agreement." (181 F. 2d 113, at 116.)

We recognize that the decision in the *Telegraphers'* case is not authority for the proposition that the National Railroad Adjustment Board would *not* have had jurisdiction to resolve the dispute over the meaning of the two disputed rules that had been incorporated into the telegraphers' schedule agreement. The Court's decision assumes that the Adjustment Board would have had jurisdiction to decide the dispute inasmuch as the rules had been made the subject of a collective agreement. But the decision is significant, we submit, in relation to the major issue presented by the instant appeal because of the length to which the authority vested in the arbitration board was held to extend. Moreover, had the arbitration award not been incorporated into a collective agreement in the *Telegraphers'* case, the implication of that decision is that the broad authority vested in arbitration boards by paragraph (m) of Section 8 would have been above challenge on any ground on the facts involved in that litigation.

When the appellants contend, as they do, that this Court should hold that the processing of firemen's (helpers') claims and grievances resulting from the improper enforcement of the Arbitration Award through the Section 17 grievance procedure is obligatory if they are to avoid becoming barred, the appellants bear the burden of demonstrating that claims and grievances growing out of a compulsory arbitration award are subject to the procedures of Section 3 of the Railway Labor Act. We suggest that the appellants cannot, and have not, sustained that burden.

The Processing of Individual Claims and Grievances in the Manner Required by the Section 17 Grievance Procedure Would Be a Vain Undertaking.

The appellants' contention that grievances and claims resulting from the carriers' erroneous application of the Arbitration Award should be considered barred unless the individual grievances and claims are first processed within

the time and in the manner prescribed by the Section 17 grievance procedure is based upon a rule of fairly general application. But that rule is everywhere subject to at least one exception. That exception is that contract grievance procedure need not be exhausted by the employee before carrying his grievance or claim to the courts if it is apparent that such procedure would be futile.

American Jurisprudence states the exception to the general rule by saying that exhaustion of the contract grievance procedure is not a condition precedent to resorting to a civil action in the courts when it appears that such procedure by the employee would have been in vain. We quote the statement as follows:

"Exhaustion of Remedy Provided by Agreements as Condition Precedent. In general, where a collective agreement provides for an extrajudicial means of hearing and determining disputes growing out of grievances of employees or the interpretation and application of contracts between employer and employee, an employee should exhaust the remedy provided before resorting to the courts. A different result may be reached, however, where there is no statute prescribing the exhaustion of remedies provided by the agreement, or it appears that such procedure by the employee would have been in vain." (31 Am. Jur., Labor, Sec. 124, p. 485.)

American Law Reports states the exception to the general rule in this manner:

"Even where exhaustion of contractual remedies is generally required by local law, an action for wrongful discharge may be maintained without exhaustion thereof, if it appears that recourse to such remedies would have been futile, or if the circumstances are such as to justify the employees' failure to invoke such remedy." (72 A.L.R. 2d 1439, at 1445.) (Emphasis added.)

In *United Protective Workers v. Ford Motor Co.*, 223 F. 2d 49, 48 A.L.R. 2d 1285 (1955), the Court of Appeals for the Seventh Circuit refused to apply the general rule "because the Company's attitude in the suit, as evidenced by its briefs, made it obvious that pursuit of the grievance

procedure would have availed Orlaski (plaintiff) nothing." (223 F. 2d 49, at 51.)

The individual grievances and claims that developed during the period that the Arbitration Award was in effect fall within the exception to the general rule for several reasons.

The normal purpose and justification of contract grievance procedure, aside from imposing a time limit to prevent the processing of stale claims, is to bring to the attention of the lower echelon of management officials such contract violations as may have unintentionally developed in the normal course of business, or to provide such officials with the opportunity to reconsider management decisions that the employees, or the employees' representatives, consider to be violative of the employees' employment rights. Thus grievance procedure which includes a system of appeals to top personnel officials tends to prevent labor disputes snowballing into major conflicts.

But such is not the manner or the circumstances under which claims and grievances resulting from the improper applications of the Arbitration Award arose. The firemen's (helpers') claims and grievances did not stem from the mistakes of division superintendents or the road foremen of engines, or other first-echelon operating personnel.

The carriers' violations and misapplications of the Arbitration Award were the result of decisions that originated at the top of the carriers' operating officers. They were issued as instructions or suggestions from the top management of the railroads, and they were handed down through the levels of management to the officials responsible for supervising the day-to-day operation of freight trains and of terminal facilities.

The Western, Eastern, and Southeastern Carriers' Conference Committees have their joint headquarters at Chicago, Illinois. From the personnel of those committees there developed a top echelon of railroad officials known as the "National Railway Labor Conference" and charged with "masterminding" labor relations between the railroads and their employees. It was the National Railway Labor Conference that was the authority that railroad managements looked to for guidance when interpreting and applying the

Arbitration Award. It was from the fertile minds of the National Railway Labor Conference Committee that the novel and ingenious ideas and arguments developed by which the comparatively simple plan that comprised the original Arbitration Award was "interpreted" and shaped so as to bring about, in approximately one year from the initial application of the Arbitration Award to the firemen's (helpers') craft on May 7, 1964, the discharge of more than half of all of the locomotive firemen (helpers) employed on the railroads of the country. That is a fact that the National Railway Labor Conference has frequently announced to the press with pride.

To illustrate the novel and thoroughly ingenious guidance that flowed from the National Railway Labor Conference to the managements of the railroads, we invite the Court's attention to the language in Part C(6) of the Award. Part C(6) classified all firemen (helpers) who had acquired, prior to the effective date of the Award, from two to ten years of seniority as C(6) firemen (helpers). The language of Part C(6) states simply that C(6) firemen "shall retain their rights to and obligations to protect engine service assignments as provided by rules in effect on the day preceding the day this Award becomes effective."

However, the right to continued employment thus given C(6) firemen was qualified by the authority granted to carriers to offer C(6) firemen "comparable jobs" in other classes of service. Part C(6) provided that carriers could offer their C(6) firemen comparable jobs in other classes of railroad service, in which event the C(6) fireman (helper) had to either accept the job within 3 days or he would be discharged from his employment and seniority rights, both as fireman and as engineer.

The procedure by which carriers could accomplish that end was spelled out in detail in Part C(6). That procedural formula reads as follows:

"Such offer of (comparable) job shall be posted and made available to all qualified firemen in order of seniority in the seniority district in which the job offered is located. If, within 7 days after notice is posted, no senior man elects to take such offered jobs, the most junior man then on the fireman (helper)

*roster in that seniority district must, within 3 days from receipt of written notice, accept the job or all of his employment and seniority rights and relations shall be terminated. * * * If such junior fireman (helper) shall fail to accept such job and thereby terminates his employment as herein provided, the next most junior fireman (helper) on that same roster must accept the job within 3 days from receipt of written notice or forfeit all of his employment and seniority rights and relations with the allowance provided for above. In each case of refusal to accept such job offer the next most junior fireman (helper) shall be required to accept, as provided for above, or forfeit his employment and seniority rights and relations with, in each case, the allowance provided for above, until there are no firemen (helpers) with less than 10 years' seniority remaining on the seniority roster for the seniority district in which the job offer is located. Thereafter the same procedure as is provided above shall be followed in the fireman (helper) seniority district which has its principal extra list for firemen (helpers) closest to the location of the job offered." (J. A. 9.) (Emphasis added.)*

The procedural steps thus spelled out for carriers to follow when they desired to eliminate C(6) firemen (helpers) from their employment was set forth in language sufficiently simple and forthright that most teenagers could have followed the instructions without being confused or having reason to doubt the propriety of his action.

Moreover, there was a degree of common sense and fairness in the plan devised by the neutral members for the elimination of C(6) firemen. During the seven days that a list of comparable jobs were to be posted on a seniority district, the jobs were to be allotted to those who bid for them in the order of the seniority of the bidders. The senior C(6) fireman bidding would be accorded preference in the awarding of the jobs. Those C(6) firemen (helpers) who failed to bid on the jobs (only a very small percentage of the C(6) firemen bid on the jobs when they were bulletined) obviously did not want the jobs.

The plan doubtless anticipated that this would prove to be the situation, and so the plan also contemplated that after the bulletining period the job offers would be forced

upon the C(6) firemen (helpers) in the reverse order of their seniority. That was to be accomplished by requiring that the first notice of a job offer the carrier would send or deliver to a C(6) fireman (helper) must be sent to the most *junior* C(6) fireman on the seniority district where the jobs were located. If the junior C(6) fireman waited three days without accepting the job offer, his employment terminated automatically at the end of three days, and notice of the job offer was then to be sent to the *next most junior* C(6) fireman on the seniority roster, and so on, until the job offers had all been accepted, or all of the C(6) firemen on that seniority district had been severed from their employment.

The plan assumed, of course, that a carrier might not have enough comparable jobs available on a seniority district to provide all C(6) firemen employed on that seniority district with a "comparable job." In that event, the senior C(6) firemen who had already indicated their lack of interest in the alleged comparable jobs by not bidding on them while they were being bulletined might be able to continue in their employment as a fireman (helper).

The simple procedure thus devised for the gradual and slightly equitable method of eliminating C(6) firemen (helpers) from their employment proved, however, to be a source of genuine "confusion" to the National Railway Labor Conference Committee. Railroad managements began the process by bulletining a list of allegedly comparable jobs on a seniority district for the seven-day period required by the Award. At the end of that period, the carriers proceeded to send notices of the comparable job offers to numerous C(6) firemen (helpers) simultaneously. At the end of three days following receipt of the job offers, those C(6) firemen who had not indicated their acceptance of the job offer were discharged *en masse*. (J. A. 104, para. (9)).

The Firemen's Brotherhood protested such obvious departure from the procedure spelled out in Part C(6) of the Award. The railroad managements insisted, however, that they had complied with the procedure prescribed by the Award. Managements' explanation was that at the

end of the three-day period following the delivery of the three-day job offers, management *looked for or examined each C(6) fireman's response in the order of each fireman's standing on the firemen's (helpers') roster, beginning with the most junior fireman*. As the officials came to those responses (if any) in which one or more firemen (helpers) accepted the job offer, the jobs were awarded in the order of the fireman's (helper's) seniority, starting with the junior and going to the more senior firemen. (J. A. 186, para. (c)).

When that method of violating Part C(6) had been brought to a halt, the railroad managements proceeded to employ a new method of complying with Part C(6) procedure. That was that after a list of comparable jobs had been posted for seven days, the management would then send notices of the job offers to as many C(6) firemen (helpers), beginning with the most junior C(6) fireman (helper), *as there were comparable jobs available*. Those C(6) firemen (helpers) who did not accept the job offers were discharged simultaneously, or substantially so.

After the railroad managements were finally convinced through the Brotherhood's efforts and the rulings of Arbitration Board No. 282 that the procedure they were using to eliminate C(6) firemen *en masse* from their employment was not authorized by Part C(6) of the Award, the National Railway Labor Conference was not yet convinced that the procedure prescribed by Part C(6) of the Award was meant to be followed precisely as it was spelled out. The new instructions issued to railroad managements caused them to believe (?) that the notices of comparable job offers sent to C(6) firemen (helpers) after the seven-day bulletining period need not be sent to C(6) firemen (helpers) singly and in the order of their seniority if the comparable jobs that were being offered were all jobs of one kind, such as all switchmen's jobs, or all painters' jobs.

Again the task of compelling the carriers to comply with the simple procedure prescribed by Part C(6) had to be undertaken by the Firemen's Brotherhood, and the

Arbitration Board was again obliged to affirm the procedural requirements of Part C(6) of the Award.⁴

An illustration of the effect on firemen's (helpers') employment rights that was accomplished by the ingenuity of the National Railway Labor Conference in discovering novel ways to interpret and apply the Arbitration Award is to be seen at pages 104 to 107 of the Joint Appendix. The Court will note that on May 11, 1964, the management of Southern Pacific's Texas and Louisiana Lines posted on each of its six seniority districts lists of comparable jobs available to C(6) firemen. Twelve C(6) firemen bid on the jobs during the bulletining period.

On May 20 and May 21, 1964, the management sent written notices of the job offers to all remaining C(6) firemen employed on the six seniority districts—a total of 63 such firemen (helpers).

Under dates of May 25 and May 26, 1964, the management sent to all 63 firemen (helpers) notices informing them that their employment and seniority rights were being terminated as of that date. The names and addresses of the 63 firemen thus unlawfully discharged appears on pages 104 to 106 of the Joint Appendix.

In a letter dated May 27, 1965, from the Brotherhood's acting general chairman on the T. & L. Lines directed to Mr. L. C. Albert, the Manager of Personnel on the T. & L. Lines, the management was informed that the procedure it was following to separate C(6) firemen (helpers) from their employment was contrary to the Award, and that it should forthwith withdraw the notices of dismissal it had sent to the C(6) firemen (helpers). (J. A. 104 and 190)

The appellants now come before this Court and insist that the claims and grievances of C(6) firemen (helpers) discharged in the manner that the 63 firemen (helpers)

⁴ Arbitration Board No. 282 was required on five successive occasions to declare that the procedure detailed in Part C(6) of the Award for separating C(6) firemen from their employment was mandatory. Those occasions were BLF&E Question No. 24 (June 9, 1964); BLF&E Question No. 45 (Sept. 16, 1964); BLF&E Question No. 70 (May 16, 1964); Southern Pacific Question No. 2 and BLF&E Question No. 2 (May 6, 1965); BLF&E Question No. 174 and Carriers' Question dated January 10, 1965 (March 29, 1966).

were discharged from the T. & L. Lines should be held barred from relief because their individual claims for lost wages or being unlawfully deprived of their jobs were not processed within the time and in the manner prescribed by the Section 17 grievance procedure.

Would not such procedure have been a vain pursuit when the Manager of Personnel on the T. & L. Lines, Mr. L. C. Albert, disclaimed any wrongdoing in connection with the carrier's method of discharging C(6) firemen (helpers) when the propriety of the carrier's procedure was questioned by Acting General Chairman Lewis on May 27, 1964?

Similar timely criticisms were placed before the Manager of Personnel by the Brotherhood's general chairman with respect to the specific violations of the Award that resulted in the claims that are set forth as illustrations in the Byron affidavit of December 1, 1965. (J. A. 254, para. (7) and pp. 262-263; 257, paras. 18 and 19)

In Paragraph (J) of the Brotherhood's Motion for Supplemental Relief filed February 11, 1965, (J. A. 25), the fact is alleged that in the course of several conferences between Southern Pacific Company officials and the Brotherhood's chairmen, regarding the propriety of the carrier's actions that have been detailed under nine headings in the Byron affidavit of February 11, 1965, the carrier officials' final answer in each instance to the chairmen's protests was that the actions complained of were proper and consistent with the Arbitration Award because Southern Pacific was being guided, directed, and counseled by the Chairman of the Carriers' National Railway Labor Conference and the Chairman of the Western Carriers' Conference Committee in applying and enforcing the Arbitration Award. (J. A. 25)

These facts are affirmed in the Lohrke affidavit. (J. A. 173, para. 3).

Is it possible, under the circumstances, to assert in good faith that the processing of the firemen's (helper's) individual claims and grievances through the Section 17 grievance procedure would be anything but a vain and useless task? We think the answer to this question is too apparent to require expression.

There is a second reason why requiring the thousands upon thousands of employees' claims and grievances that resulted from the carriers' violations and misapplications of the Arbitration Award to be processed through the Section 17 grievance procedure would be a vain and useless undertaking. That reason lies in the answer to the question: What would have happened to those claims and grievances *after each had been denied by the highest carrier officer designated to handle claims and grievances and they had been written up and filed with the First Division of the National Railroad Adjustment Board?* The answer is clear, based upon the First Division's past record of deciding cases.

It is common knowledge in the railway industry that a delay of several years occurs between the docketing of a claim with the First Division and the time that the claim reaches the hearing and decision stage, with the exception of wrongful dismissal cases. The vast majority of the claims and grievances that have developed as a result of the enforcement of the Arbitration Award arose within a year after the Award became applicable to the firemen's craft, which occurred on May 7, 1964.

The answer to the above question is provided by the National Mediation Board's Thirty-First Annual Report to the Congress for the fiscal year from June 30, 1964, to June 30, 1965. That report discloses that at the beginning of the fiscal year of June 30, 1964, there were a total of 4062 claims or grievances docketed with the First Division.

During that fiscal year a total of 570 cases were "disposed of." The 570 cases were disposed of by the carrier members and the labor members agreeing upon the disposition of 141 cases. The carrier members and labor members deadlocked on 79 cases. Those were decided with the aid of referees.

A total of 340 cases were "withdrawn" from the Adjustment Board.

A total of 564 new cases were docketed during the fiscal year, almost precisely the number that were disposed of during the fiscal year. (pp. 76-77, Thirty-First Annual Report of National Mediation Board.)

This record of the year's accomplishments by the First Division is quite consistent with its record of accomplishments in prior years.

On the basis of that record, one can conclude with reasonable assurance that the claims and grievances that the appellants here contend should have been processed to the National Railroad Adjustment Board under Section 17 procedure would have lain there for a period of seven years before the first of them would have been scheduled for a hearing.⁵

We recognize that it is not one hundred per cent correct to say that requiring the individual firemen's claims and grievances resulting from the application of the Arbitration Award to be submitted to the National Railroad Adjustment Board would have been a vain and futile undertaking. But if the firemen (helpers) had looked to the Adjustment Board to obtain payment of their claims and the correction of their grievances, their efforts would have come close to being a vain and futile undertaking, particularly when there is a degree of truth in the legal maxim "Justice delayed is justice denied."

A third reason why processing the firemen's (helpers') claims and grievances resulting from the carriers' violations and misapplications of the Arbitration Award, through the Section 17 grievance procedure, would have been a vain and futile undertaking is that, assuming the employees survived to see their claims and grievances sustained by favorable awards from the Adjustment Board, that development would not have assured the employees that their claims and grievances would have been satisfied or corrected.

Under the provisions of Section 3 of the Railway Labor Act, carriers have a clear legal right to elect to not pay

⁵ The fact that the Congress enacted on June 20, 1966, an amendment to Section 3 of the Railway Labor Act, under which either the representatives of the employees or of management can require the establishment of a special board of adjustment to decide claims and grievances, can have no bearing on the question before this Court. The question before the Court is whether claims for the loss of wages and of jobs during 1964 and 1965 should have been processed at that time through the Section 17 procedure, which included appealing the claims and grievances to the First Division of the Adjustment Board.

an award in favor of the employee. This fact is too well known in the railway industry to require the citation of authorities.

Those carriers whose managements are endowed with a normal sense of responsibility have at times satisfied the claims and grievances of their firemen (helpers) when Arbitration Board No. 282 issued interpretations that established beyond a reasonable doubt that the Arbitration Award had been wrongfully applied to that carrier's employees. But there are a far greater percentage of carriers whose management would be as unmoved by a ruling by Arbitration Board No. 282 to the effect that the Award had been wrongfully enforced against their firemen (helpers) as are unmoved by an Adjustment Board Award rendered in favor of their employees.

We summarized briefly the Brotherhood's experience in finding it necessary to return to the reconvened Arbitration Board five different times to obtain affirmation and reaffirmations that the simple procedure prescribed by Part C(6) of the Award had to be followed if C(6) firemen (helpers) were to be lawfully eliminated from their employment. Yet there are railroad managements that continue to be unmoved by those irrefutable demonstrations that they have obligations to their C(6) firemen (helpers) for wage losses and unlawfully depriving them of their jobs.

To illustrate, the Santa Fe's Coast Lines management severed more than 200 C(6) firemen (helpers) from their employment at times and under circumstances that indisputably violated the requirements of Part C(6) of the Award and the Arbitration Board's five rulings relative to that procedure. The Brotherhood's general chairman on the Coast Lines has tried persistently for more than a year to persuade that management to make appropriate amends to its C(6) firemen (helpers). Yet as of this time, the firemen (helpers) continue to wait for the compensation owed them and for the restoration of the jobs to which they are entitled.

Similar situations exist on other railroads, whose managements are unmoved in matters favorable to their em-

ployees except by force. An Adjustment Board award against such carriers, in favor of C(6) firemen (helpers) would avail nothing.

The Carriers' Purpose in Insisting that the Section 17 Grievance Procedure Is Obligatory Is to Raise a Bar that Will Effectively Absolve the Carriers of Virtually All Claims and Grievances Resulting from the Improper Application of the Arbitration Award.

The Court will recall that the Section 17 grievance procedure begins by imposing a close time limit on the filing of claims and grievances. The rule states that claims and grievances must be presented in writing to the officer of the company authorized to receive the same "*within sixty days from the date of the occurrence on which the claim or grievance is based.*" (J. A. 266).

This would have meant, for example, that the sixty-three C(6) firemen (helpers) who were improperly discharged from their employment on the T. & L. Lines on May 25, 1964, would have had to file written claims or grievances with the timekeeper on their seniority district before July 25, 1964, or their claims would have been barred.

Yet it was on or about May 27 or May 28, 1964, that the Coast Lines' Manager of Personnel, Mr. L. C. Albert, had totally and finally rejected Acting General Chairman Lewis' letter of protest against the discharging of the 63 firemen (helpers). The Manager of Personnel insisted that the carriers' actions were strictly in keeping with instructions received from the carriers' authorities in Chicago, and that the discharges had been accomplished in full compliance with the provisions of the Award. (J. A. 104, para. 8; 173, para. 2; 190, paras. 18 and 19).

As previously explained, it was not until March 29, 1966, after five resubmissions by the Brotherhood of the same basic questions of Arbitration Board No. 282 based upon Part C(6) of the Award, that most carriers finally abandoned their contentions that it was proper and lawful under the terms of the Award to offer comparable jobs to numerous C(6) firemen (helpers) simultaneously, and to discharge them in groups. Yet the appellants ask this Court to rule that the C(6) firemen's claims and grievances

based upon their wrongful discharges had been outlawed almost a year previously, on July 25, 1964. Neither the individual employees nor the Brotherhood's local chairmen could possibly have had sufficient knowledge of the terms of the Arbitration Award to have intelligently instituted grievance proceedings against the carrier at that time.

Substantially all of the provisions of the Arbitration Award have been the subject of continuing disputes between the Brotherhood and its chairmen on the various railroads, on the one hand, and the members of the carriers' National Railway Labor Conference and the railroads' managements, on the other hand, during the two years that the Arbitration Award was in effect. In order for the parties to establish anything like a uniform understanding of the requirements of the Award, it was necessary to reconvene the Arbitration Board a total of fourteen times to resolve disputes. The Board was last reconvened on March 29, 1966, two days before the Award ceased on March 31, 1966, to be in effect. And there continues to be questions pending before the Board, which may never be resolved. In the course of the two years that the Award was in effect the Arbitration Board rendered well in excess of 200 rulings bearing upon the application of the Award to the firemen's (helpers') crafts.

In view of the state of confusion that reigned between top Brotherhood officials and top carrier officials during the two years that the Award was in effect, the argument is rather ridiculous that individual employees and the Brotherhood's local chairmen on the seniority district comprising the 160 major railroads should be presumed to have understood their employment rights under the Award sufficiently well to have been able to file written claims and grievances with local management officials *"within 60 days from the date of the occurrence on which the claim or grievance is based."*

While the fact that a contract time-limitation is manifestly ridiculous may not have any bearing upon its legality, the issue to be decided by this Court is not without equitable considerations and we doubt that any proof will be needed to demonstrate the truth of the conclusion that if

the Section 17 grievance procedure is held to be compulsory procedure for the firemen (helpers) to obtain satisfaction of their claims and grievances, the effect will be to relieve the railroads of virtually all legal obligations to their employees resulting from the carriers' violations and misapplications of the Arbitration Award.

II. DID THE DISTRICT COURT INVADE THE JURISDICTION OF THE NATIONAL RAILROAD ADJUSTMENT BOARD WHEN IT RULED THAT COMPLIANCE WITH THE SECTION 17 GRIEVANCE PROCEDURE WAS NOT OBLIGATORY?

The appellants assert that when the District Court ruled that it would enforce against carriers the terms of its judgment based upon the Award rendered by Arbitration Board No. 282, at the instance of the Brotherhood and the craft of firemen that it represents and, hence, that the processing of the firemen's (helpers') claims and grievances through the Section 17 grievance procedure was not obligatory, the District Court invaded the exclusive jurisdiction of the National Railroad Adjustment Board by thus interpreting the national agreement of August 11, 1948.

We suggest that the appellants' contention is an exaggeration, and that it is an undue proscription against the exercise of the judicial power. We suggest that the District Court, in reaching its decision adverse to the appellants' contention, did not assume to interpret or construe the procedural provisions of Section 17. There was no dispute between the parties as to the proper interpretation of those provisions. Hence, there was no occasion for the District Court to decide a dispute between the parties regarding the proper interpretation of any procedural provision contained in Section 17.

The only language in Section 17 that the District Court had any need or occasion to read were the words, "all claims or grievances arising on and after November 1, 1948, shall be handled as follows:" Whether the phrase "all claims or grievances" includes or encompasses the "proceedings" that the District Court referred to in the third paragraph of its May 11, 1964, decree when it declared that any person that is bound by the May 11, 1964, order may thereafter apply to the Court for such further orders

as may be necessary or appropriate for the enforcement "of the judgment heretofore entered in this proceeding upon the Award by Arbitration Board No. 282 or any legal obligations resulting therefrom," presents, we would suppose, a question of law for decision.

To assert that a court of law must yield to an administrative tribunal for a decision on a question of law affecting the court's jurisdiction, represents, we submit, a thoroughly novel proposition.

A court may at least read a collective agreement and grasp enough of its meaning to make decisions in connection with the exercise of its equitable jurisdiction without involving the expertise authority of the National Railroad Adjustment Board.

The observations made by the Supreme Court on this subject in *Brotherhood of Locomotive Engineers, et al. v Missouri-Kansas-Texas R. Co.*, 363 U.S. 528, at 532 to 535 (1960), in which it reversed an extreme ruling by the Court of Appeals for the Fifth Circuit (266 F. 2d 335), should satisfactorily dissipate the appellants' contention that the District Court invaded to an unwarranted degree the Adjustment Board's exclusive authority.

III. DOES A FIREMAN (HELPER) MAKE AN ELECTION OF REMEDIES, AND THEREBY PRECLUDE RESORT TO THE DISTRICT COURT FOR THE PROTECTION OF HIS EMPLOYMENT RIGHTS UNDER THE ARBITRATION AWARD, WHEN HE FILES A TIME CLAIM OR GRIEVANCE WITH THE TIMEKEEPER OR OTHER LOCAL CARRIER OFFICIAL?

The proposition that is being asserted by the Carriers' Motion filed on April 18, 1966, is that this Court should now rule that a fireman (helper) who has a claim growing out of a carrier's violation or misapplication of the Arbitration Award and has filed the claim or grievance with the customary local railroad official, has made an *election of remedies*, and that the employee is bound to pursue the Section 17 contract grievance procedure through to a conclusion, and should he fail to do so his claim or grievance must be held to be barred.

We submit that the carriers' proposal is both unreasonable and without foundation in the law.

The first step that an employee is required to take with a claim or grievance that is subject to Section 17 of the May 11, 1948, agreement is described in the Lohrke affidavit (p. 3). The claim or grievance is to be recorded by the employee on a "Time Return and Daily Report" form, which is filed with the carrier's timekeeper. The claim or grievance must be denied by the timekeeper, over the local superintendent's signature, within sixty days if the claim or grievance is disapproved.

The District Court ruled that the doctrine of election of remedies has no application to the situation presented here.⁶ That tentative view is firmly grounded on established basic principles. American Jurisprudence states the elements of the doctrine of election of remedies, as follows:

"It is apparent from the definition and character of the doctrine of election of remedies that certain well-recognized conditions must exist before the election becomes operative. They may be termed the 'elements of election' and their presence is essential to every instance in which the doctrine is to be successfully invoked. Stated briefly, these essential conditions or elements are: (1) the existence of two or more remedies; (2) the inconsistency between such remedies; and (3) a choice of one of them. If any one of these elements is absent, the doctrine will not apply to preclude the remedy not exercised." (25 Am. Jur. 2d, Sec. 8)

The doctrine of election of remedies becomes available to the defendant as a defense against a second proceeding

⁶ In the transcript of the hearing on April 6, 1966 on the form of the Order, the following appears (at pp. 25-26):

"MR. SHEA: Now, the law is that where you have an election of remedies, if you elect to pursue the procedures, the administrative procedures, you can't abandon, you must follow through on those procedures.

"THE COURT: Oh, I am not so sure about that. I am not so sure that there is such a thing as a binding election of remedies, and, certainly, I did not pass upon that. I did not intend to.

"In other words, suppose a person files a claim under the grievance procedure and then, after awhile, he comes to the conclusion that maybe he would rather go to court and abandon his proceeding under Section 17 of the 1948 Agreement. I would be inclined to the view that he would have a right to do it. I am not going to rule that he would have but I certainly don't want to rule definitively that he wouldn't."

only if the aggrieved employee had the right to elect between which of two remedies he would pursue. This requirement of the doctrine, American Jurisprudence explains in following manner:

"An election of remedies presupposes a right to elect. There must be present such a condition of facts as afford the party a choice of remedies inconsistent in character. If in truth there is only one remedy, and not a choice between two or more, the doctrine of election does not apply." (25 Am. Jur. 2d p. 652)

In light of this requirement, the question arises: did any of the courts that heard and decided the several cases cited and relied upon by the plaintiffs state specifically that the employee-plaintiff had the right to elect between pursuing the contract grievance procedure, and going directly to court to seek satisfaction of his claim or grievance? We submit that not one court in the cases cited stated that the employee-plaintiff had that choice, nor can it fairly be said that the holding in any case implies that the plaintiff could have elected to ignore the grievance procedure and go directly to court to seek the satisfaction of his claim or grievance.

Admittedly, statements can be found in the cases cited which, when lifted from their context, can be said to imply that the plaintiff did have an election of remedies. Statements that convey this implication are generally to the effect that the plaintiff, having started to pursue the grievance procedure established by the collective agreement, may not abandon that procedure before it has been pursued to a conclusion and proceed to seek relief in the courts. In the case of *Pacilio v. Pennsylvania Railroad Co.*, this statement is made:

"having initiated the procedures, plaintiff was obligated to abide by the remedies provided in the collective agreement. The withdrawal of the submission to the manager in 1960 and the failure to proceed past the superintendent level in 1963 rendered the administrative ruling binding." (230 F. Supp. at 754).

But nowhere in the opinion in the *Pacilio* case does the Court state or imply that Pacilio could have elected to by-

pass the grievance procedure and go directly to court to seek a ruling directing the carrier to restore the plaintiff to his former position or recover a judgment for damages against the carrier.

The decisions rendered in the cases cited by the appellants do not recognize that the plaintiffs in those cases had a *choice of remedies available to them*, as must be the case when the doctrine of election of remedies is properly invoked by the defendant.

The second element or condition that must exist to permit the doctrine of election of remedies to be invoked as a defense is that the available remedies must be *inconsistent*. This requirement is elaborated upon in the following explanation of this requirement as provided by American Jurisprudence:

"The doctrine of election of remedies is applicable only where there are two or more coexistent remedies available to a litigant at the time of the election, which are repugnant and inconsistent. * * *

"For one proceeding to be a bar to another for inconsistency, the remedies must proceed from opposite and irreconcilable claims of right and must be so inconsistent that a party could not logically assume to follow one without renouncing the other. Two modes of redress are inconsistent if the assertion of one involves the negation or repudiation of the other." (25 Am. Jur. 2d, Sec. 11 and 12)

There is no such inconsistency as this statement contemplates, between pursuing collective agreement grievance procedure with the final step being the submission of the dispute to the National Railroad Adjustment Board or to a system board of adjustment, and resorting to the courts for the recovery of money damages or for injunctive relief. The case of *Union Pacific R.R. Co. v. Price*, 360 U.S. 601 (1959), is cited by carriers' counsel with the following explanatory statement, which we would understand as implying that the case as disposed of by the Supreme Court involved the election of remedies doctrine:

"An employee who elects to seek redress through grievance procedures is not authorized to come to court

after such procedures have terminated in an Adjustment Board decision adverse to the employee. *Union Pacific R.R. Co. v. Price*, 360 U.S. 601 (1959)."

The plaintiff in the *Price* case, a discharged railway employee, was denied the right to resort to a common law action for damages after the union representing the plaintiff had processed his grievance based upon the discharge through the required management levels and had then submitted the grievance to the National Railroad Adjustment Board. The claim was denied by the Adjustment Board. The Supreme Court ruled that the common law action for damages would not lie solely because the Court was convinced that Congress intended, when it enacted the 1934 amendment to the Railway Labor Act, that *decisions rendered* by the Adjustment Board in its proper sphere of authority were to be treated as final and binding, insofar as the employee is concerned. The basis of the Supreme Court's reasoning is made unmistakably clear by the following explanatory statement near the end of its opinion (360 U.S. 616-617):

"This grist of labor relations is such that the statutory scheme cannot realistically be squared with the contention that Congress did not purpose to foreclose litigation in the courts over *grievances submitted to and disposed of* by the Board. * * *. To say that the discharged employee may litigate the validity of his discharge in a common-law action for damages *after failing to sustain his grievance before the Board* is to say that Congress planned that the Board should function only to render advisory opinions." (Emphasis added.)

The appellants' would have this Court rule that the *Price* case is authority for the proposition that an employee may not litigate his claim in the courts where he has done no more than lodge a time claim or file a grievance with a timekeeper or other local carrier official. Such extension of *Price* clearly is unwarranted.

We next invite the Court's attention to the third requirement of the doctrine of election of remedies, namely, that the plaintiff must in fact be making a choice when he

selects one of two remedies. Speaking of this requirement, American Jurisprudence states the requirement as follows:

"Just what acts on the parts of one having inconsistent remedies for the enforcement of a right amount to an election of a remedy is not altogether clear and has occasioned a considerable difference of view in the cases. That the determinative character of the choice must appear is, however, undoubted. Generally, the cases state that there must be some decisive and unequivocal act of election, some final choice of the inconsistent remedy, and that anything falling short of such notice will not constitute an election. * * *

"As a general rule, acts prior to the actual commencement of legal proceedings indicating an intention to rely upon one remedial right do not constitute an election which will preclude the subsequent prosecution of an action or suit based upon an inconsistent remedial right, unless the acts contain the elements of an estoppel in pais. *Thus, no election results from a mere demand by a seller for the return of articles sold on installment and not paid for, from the mere presentation of a claim for injuries, or the mere presentation of a claim to the receiver, assignee, or other representative of an insolvent. Nor, similarly, does an election result from the filing of claims against the estate of the decedent so as to bar an action for specific performance of a contract to leave property by will.* * * *

"The beginning of a suit has been characterized as an unequivocal act of election. Courts taking this view consider the commencement of an action on one of two or more inconsistent remedies to have the effect of an estoppel by record. * * * " (25 Am. Jur. 2d, Sec. 14, 15 and 16) (Emphasis added).

In connection with the question as to how far a plaintiff may pursue one remedy before he must be held to have made an election of remedies, it is helpful to bear in mind the reason or purpose for there being such law as the election of remedies doctrine. Its reason or purpose is explained by American Jurisprudence in this simple manner:

"The purpose of the doctrine of election of remedies is not to prevent recourse to any remedy, but to prevent double redress for a single wrong. Its rationale is

that courts will not permit suitors solemnly to affirm that a given state of facts exists from which they are entitled to a particular relief and afterward affirm or assume that contrary state of facts exists, from which they are entitled to inconsistent relief. One may not take contradictory positions in asserting a right in court if the assertions of the plaintiff's first right involves a negation of the right as claimed in the second case. In this connection the language of the Scottish law—that a man shall not be allowed to approbate and reprobate—is sometimes used. * * *

“The doctrine of election of remedies, Roman in origin, is but an application of the maxima that ‘he who seeks equity must do equity,’ and that ‘a person shall not be twice vexed for one and the same cause.’ The doctrine has been frequently regarded as an application of the law of estoppel, on the theory that a party cannot, in the assertion or prosecution of his rights, maintain inconsistent positions, and that where there is by law or by contract a choice between two remedies, which proceed upon opposite and irreconcilable claims or right, the one taken must exclude and bar the prosecution of the other. * * *” (25 Am. Jur. 2d, Secs. 2 and 3).

Is it reasonable to contend or suppose, in the light of the foregoing explanation of what constitutes the making of an election of remedies, or the purpose served by that doctrine, that the act of an employee filing a claim with a local railroad official, or even the processing of such claim by appeal to higher carrier officials, should constitute an act of election, and bar the employee from seeking relief in the Court below pursuant to that Court's order of May 11, 1964? Or that the pressing of claims before railroad officials is so vexatious or prejudicial to the carrier that the employee should be denied the right to appeal to the District Court to require the carrier to comply with the Arbitration Award and to correct its violations or misapplications of that Award?

We submit that the answers to these questions must be in the negative. And we further submit that the carriers have submitted no authority that holds, or compels, or justifies, a contrary conclusion.

The Application of the Principle Urged by the Carriers Would Produce Absurd Results.

The appellants urge that if a carrier violates Award 282 and the employee or his representative takes action which happens to comply with the first requirement or first step of the Section 17 procedure, then the employee is thereafter barred from seeking redress by way of judicial enforcement of the District Court's judgment on the Award or by way of that Court acting under its reservation of jurisdiction in its order of May 11, 1964, for the "carrying out or enforcement of this order or the judgment heretofore entered in this proceeding upon the Award of Arbitration Board No. 282 or any legal obligation resulting therefrom."

The first step required by Section 17 is presenting a claim within 60 days to an official of the carrier designated by it under that section. Thus under the principle espoused by the carriers, an employee who made his claim to the official specified under Section 17 would have initiated the Section 17 procedures and lost his right to judicial redress and could obtain relief only by continuing with the Section 17 procedures. But if he made his claim to an official who did not happen to be the one designated by the carrier under Section 17, he would not have initiated the Section 17 procedures and would not be barred from a judicial remedy. Likewise, under the principle espoused by the carriers, an employee who presented his claim on the 60th day to the designated official would have initiated the Section 17 procedures and lost his right to judicial redress and could obtain relief only by continuing with the Section 17 procedures. But one who was more tardy and presented his claim on the 61st day or the 161st day would not have initiated the Section 17 procedures and could have access to the District Court for relief.

Any principle that would lead to such absurd results should not be adopted.

CONCLUSION

The appellants' appeal should be dismissed, and the Section 17 issue should be considered as having been conclusively resolved so far as this Court is concerned.

Respectfully submitted,

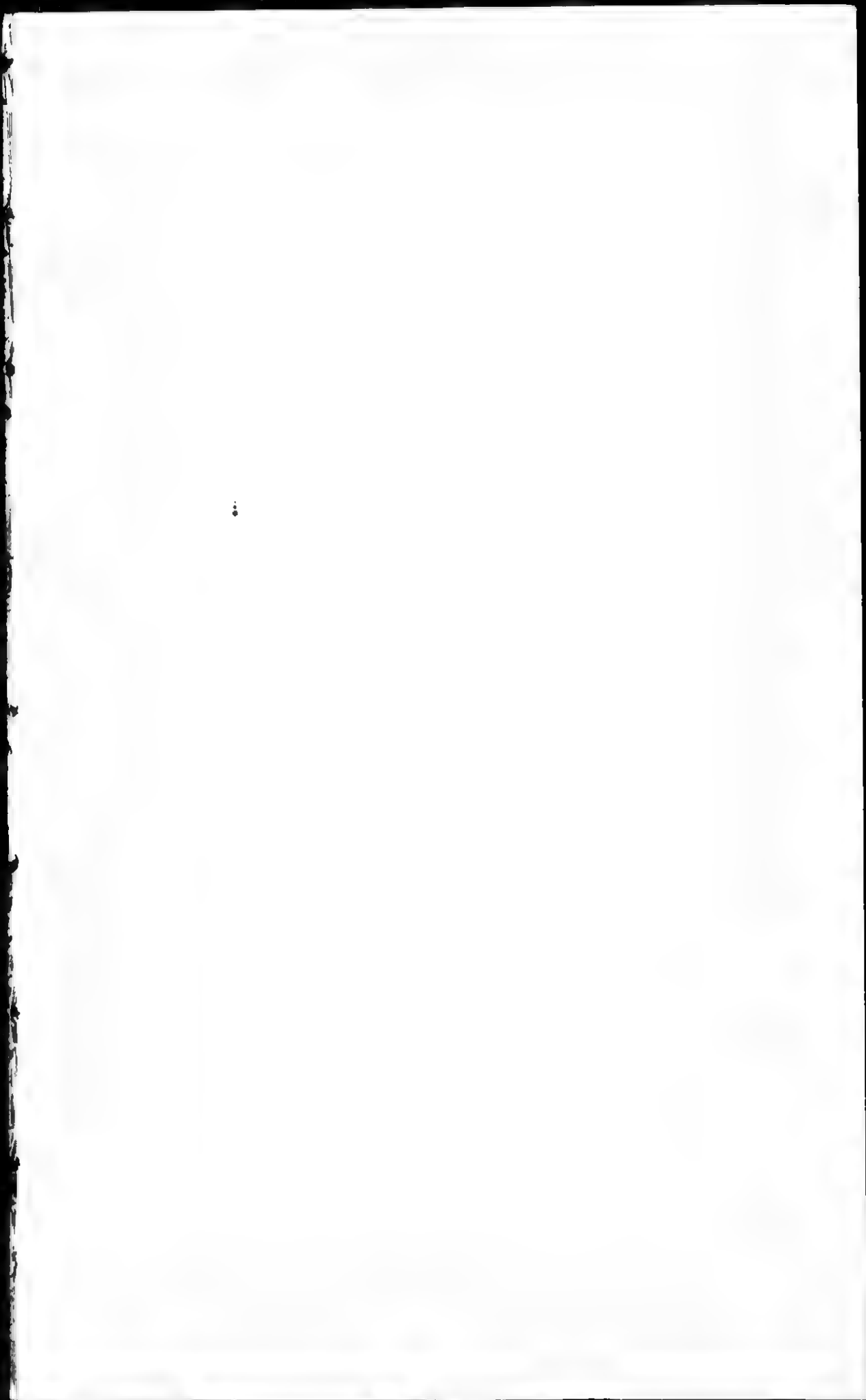
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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,378.

**SOUTHERN PACIFIC COMPANY, *et al.*,
Appellants,**

vs.

**BROTHERHOOD OF LOCOMOTIVE FIREMEN AND
ENGINEMEN,
Appellee.**

APPELLEE'S SUPPLEMENTAL BRIEF.

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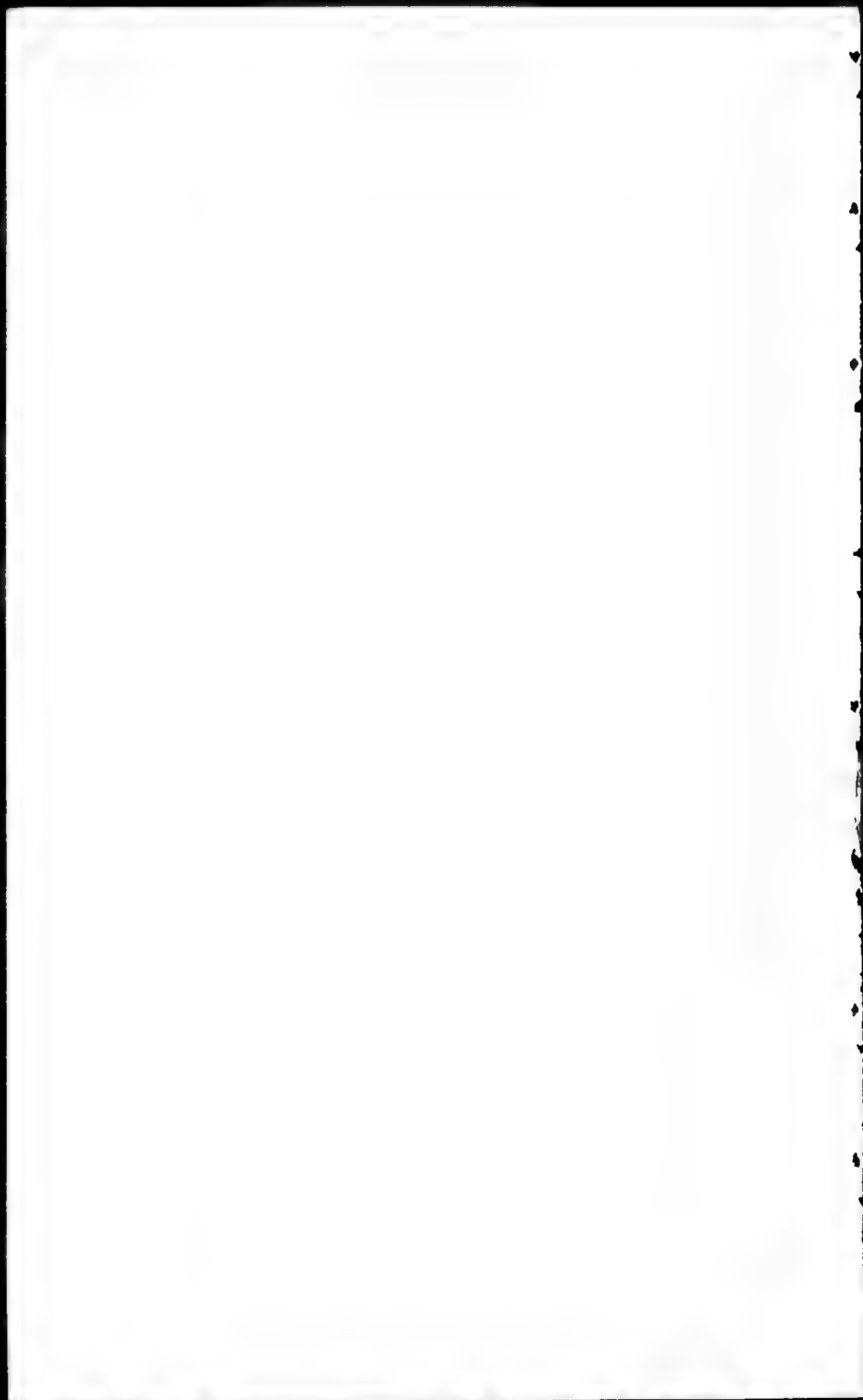


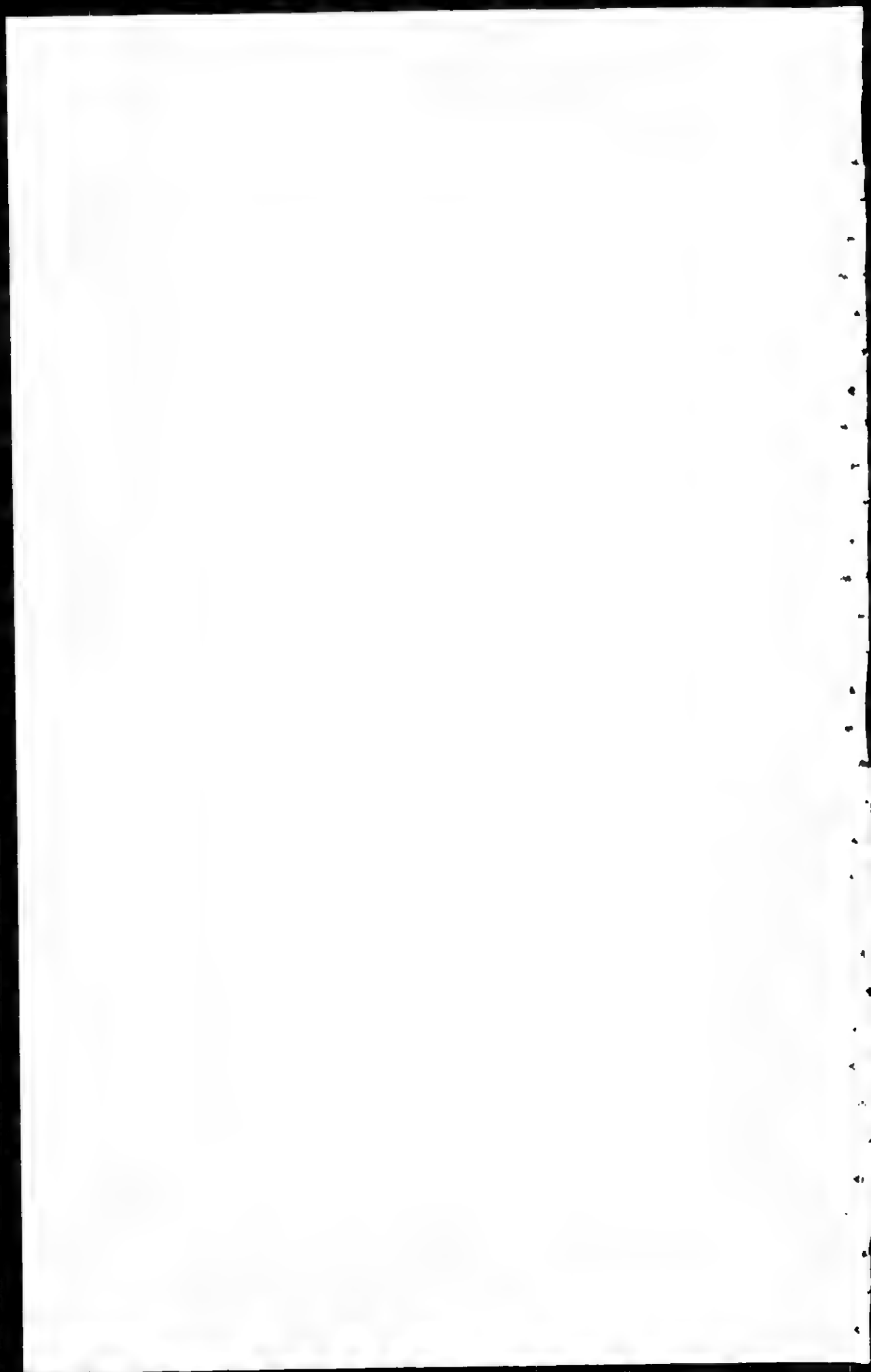
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<i>Automobile Ins. Co. v. Barnes-Manley Wet Wash Laundry Co.</i> , 168 F. 2d 381	14
<i>N. L. R. B. v. C. & C. Plywood Corp.</i> , 87 S. Ct. 559	13
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Other.

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APPELLEE'S SUPPLEMENTAL BRIEF.

The appellants' reply brief begins with the following observation:

"The Brotherhood's brief discusses a variety of different kinds of claims based upon various alleged violations of the Award of Arbitration Board No. 282 by a number of railroads. However, the orders from which this appeal is taken concern only two kinds of claims against only one railroad."

By this statement, we understand the appellants to be saying that the issue brought to this Court for decision by the appellants' appeal is limited to the question whether two kinds of claims growing out of violations of the Arbitration Award by one carrier, namely, the Southern Pacific Company, are outlawed because they were not processed in the manner prescribed by a system of grievance procedure established by Section 17 of a national agreement entered into on August 11, 1948, by the Brotherhood of Locomotive Firemen and Enginemen and the major

railroads of the country represented by the Eastern, Western and Southeastern Carriers' Conference Committees.

The appellee's understanding of the issue or issues that were brought before this Court for review by the appellants' notice of appeal, by the record that is now before this Court, and by the appellants' original brief, was stated at pages six to nine of the appellee's brief.

The manner in which this question is resolved by this Court is important to the Brotherhood and to the crafts of firemen (helpers) employed on the railroads represented by the three Carriers' Conference Committees, because there ought to be an end to the number of times that the carriers can insist upon retrying the same basic issue in the District Court and appealing from such rulings to this Court.

We invite the Court's attention to the kind of proceeding in the District Court from which this appeal stems. That proceeding was a motion for supplemental relief filed by the Brotherhood of Locomotive Firemen and Enginemen against "Southern Pacific Company and Other Carriers Represented by the Eastern, Western and Southeastern Carriers Conference Committees." (J.A. 245.) That motion was filed on December 1, 1965, in a proceeding designated "Misc. No. 41-63."

The long history of the proceeding that is designated "Misc. No. 41-63" in the District Court originated with the filing in that Court of the Arbitration Award rendered on November 26, 1963, by Arbitration Board No. 282 and the judgment that was entered by the District Court based upon that Award, in compliance with the requirement of Public Law 88-108. The judgment was entered of record on February 28, 1964 (J.A. 13). The railroads that are subject to the judgment entered in Misc. No. 41-63 are the approximately 160 railroads of the country that are

represented by the Eastern, Western and Southeastern Carriers' Conference Committees and were parties to the proceedings before Arbitration Board No. 282.

The arbitration Award went into effect, insofar as the firemen's (helpers') craft is concerned, on May 7, 1964. A few days later the three Carriers' Conference Committees filed an application in the District Court in Misc. No. 41-63 in which they sought a permanent injunction to prevent the Brotherhood of Locomotive Firemen and Enginemen, and all persons acting in concert with it, from engaging in a strike or work stoppage as a result of any dispute arising with any of the carriers represented by the three Carriers' Conference Committees over the manner in which the carriers interpreted or enforced the arbitration Award. The injunction as prayed for was granted (229 F. Supp. 259), and was entered of record on May 11, 1964.

Although the Carriers' Conference Committees obtained the injunction they sought in Miscellaneous No. 41-63, the District Court conditioned the injunction by reserving jurisdiction for the purpose of "enabling any of the parties to this proceeding * * * to apply to this Court at any time for such further orders as may be necessary or appropriate * * * for the enforcement * * * of the judgment heretofore entered in this proceeding upon the Award by Arbitration Board No. 282 or any legal obligations resulting therefrom."

The Brotherhood first availed itself of the opportunity to apply to the District Court for the enforcement of the judgment based upon the Arbitration Award on February 11, 1965. On that occasion it filed a motion for supplemental relief against the Southern Pacific Company (J.A. 20), supported by the Allen C. Byron affidavit (J.A. 27 to 172). The Byron affidavit described in detail nine differ-

ent kinds of actions that the management of the Texas and Louisiana lines of the Southern Pacific Railroad had indulged in which had the effect of depriving firemen (helpers) of earnings and of jobs under circumstances that the Brotherhood believed was either directly violative of the terms of the Award or was action that was not authorized or justified by the Award.

Some 900 employees' claims and grievances were listed in the Byron affidavit. Southern Pacific's response to the Brotherhood's motion for supplemental relief and the Byron affidavit was an affidavit by E. S. Lohrke (J.A. 173 to 236) and a Memorandum of Points and Authorities. Aside from denying that the firemen (helpers) on the Texas and Louisiana lines had a sound legal basis for asserting the claims and grievances that were set forth in the Byron affidavit, *the carrier asserted as a defense against all nine kinds of violations that each claim or grievance asserted in the Byron affidavit must, as a matter of law, be processed to a conclusion through the grievance procedure, including submission to the National Railroad Adjustment Board, established by Section 17 of a national agreement dated August 11, 1948, failing which the claim or grievance must be held to be outlawed.*

The Brotherhood's motion and a stipulation of facts based upon the Byron and Lohrke affidavits came before the District Court for argument and decision on June 7, 1965. The decision announced by the District Court relative to Southern Pacific's defense based upon the firemen (helpers) failing to pursue the grievance procedure established by Section 17 of the August 11, 1948, agreement was adverse to the carrier's contention. (241 F. Supp. 1004.) On September 13, 1965, the District Court signed an order requiring Southern Pacific to make appropriate amends to its firemen (helpers). That order contained the

following ruling regarding the defense based upon the Section 17 grievance procedure:

"* * * (c) the claims of the said former C(6) firemen (helpers) should not be barred under the circumstances here involved by any failure on their part to invoke or to exhaust the contract grievance procedure established in agreements between the Southern Pacific and the BLF&E, * * *." (J.A. 241.)

We have previously stated that the appeal now before this Court stems from a motion for supplemental relief filed by the Brotherhood in Misc. No. 41-63 on December 1, 1965. That motion is reproduced at pages 245 to 248 of the Joint Appendix. By that motion the Brotherhood moved the District Court for an order "declaring that the Southern Pacific Company and all other carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees and that are party to the above-entitled proceedings" (Misc. No. 41-63) are obligated to pay the claims and settle the grievances of their firemen (helpers) employees resulting from the carriers' violations of the Award rendered by Arbitration Board No. 282 without such claims and grievances having been processed through the grievance procedure established by Section 17 of the August 11, 1948, agreement.

The motion concludes with the following prayer for a declaration of the firemen's (helpers') rights and obligations based upon the judgment entered in Misc. No. 41-63:

"WHEREFORE, the Brotherhood moves the Court to enter an order declaring that the right of the Brotherhood and of the locomotive firemen (helpers) it represents to require the carriers party to the above-entitled proceeding to comply with the judgment entered in that proceeding upon the Award by Arbitration Board No. 282 is not conditioned by the terms of the national agreement of August 11, 1948, and

that the carriers are bound to satisfy such valid claims or grievances asserted by the employees, or on their behalf, as result or flow from the carriers' improper interpretations and applications of the Arbitration Award and the judgment based thereon, without regard to the terms of the collective agreement entered into on August 11, 1948, by and between the Brotherhood and the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees." (J.A. 248.)

The Brotherhood's motion for supplemental relief was supported by two affidavits. The first was an affidavit by H. E. Gilbert, president of the Brotherhood of Locomotive Firemen and Enginemen (J.A. 249-251). That affidavit set forth the fact that the carriers that are subject to the Arbitration Award had been refusing since about February 11, 1965, to satisfy the firemen's (helpers') valid claims and grievances resulting from the carriers' wrongful interpretations and applications of the Award on the ground that such claims and grievances must first be processed through the grievance procedure established by the August 11, 1948, national agreement (J.A. 250). The last paragraph of the Gilbert affidavit explains the purpose of the second affidavit, filed in support of the Brotherhood's motion for supplemental relief, as follows:

"(8) The Allen C. Byron affidavit filed herewith in the above-entitled proceeding provides illustrations of the conditions and circumstances under which the Southern Pacific Company, and substantially all other railroads subject to the Arbitration Award, have been and are declining and refusing to pay valid claims by employees growing out of violations by the railroads of the Arbitration Award, on the grounds that such claims are barred by Section 17 of the national agreement of August 11, 1948." (J.A. 251.)

The Brotherhood's motion for supplemental relief filed on December 1, 1965, was argued to the District Court on March 28, 1966. At the conclusion of the argument the Court announced its decision. That decision is reproduced at pages 321 to 324 of the Joint Appendix, and is reported at 253 F. Supp. 532. The decision begins with a recital of the purpose of the Brotherhood's motion. That purpose was stated by the Court as follows:

"The Court: The (sic) is a motion by the Brotherhood of Locomotive Firemen and Enginemen for an order declaring that the Southern Pacific Company *and all other carriers represented by certain Conference Committees* are obligated, pursuant to the judgment heretofore entered in this proceeding upon the Award rendered by Arbitration Board No. 282, to pay the claims of their respective locomotive firemen employees for loss of wages and loss of other forms of remuneration caused to them by alleged violations by the carriers of the Arbitration Award, and that the validity of those claims is not dependent upon their being filed and processed in the manner prescribed by Section 17 of a collective bargaining agreement entered into on August 11, 1948." (J.A. 321.) (Emphasis added.)

The decision then summarizes the carriers' contention, and also the Brotherhood's contention. The court then announced its decision on the issue thus posed. We quote as follows:

"The carriers contend that the claims should be submitted and handled pursuant to certain provisions contained in a collective agreement dated November 1 (sic), 1948. These provisions are contained in Section 17 of that agreement and provide for an administrative remedy consisting of several steps within the organization of the carrier. The

claims must be submitted within sixty days after the date on which it arose.

"If eventually the claim is denied, recourse would be had to the National Railroad Adjustment Board.

"It is claimed by the moving parties that there is no obligation to submit the claims for a determination by the administrative process in the first instance.

* * *

"The question before the Court is not whether the claimants have a right to resort to the grievance procedure. The question is whether they are obligated to do so.

"The Court is of the opinion that the prior agreement may not oust the Court of jurisdiction to determine a claim arising subsequently." (J.A. 321 to 323.)

The Court then stated that with respect to the specific claims referred to in the Byron affidavit against the Southern Pacific Company, which the Company had declined to settle because they had not been processed within the time or in the manner prescribed by the Section 17 grievance procedure, such claims would be judicially enforced notwithstanding they had not been processed through the grievance procedure established by Section 17 of the August 11, 1948, agreement.

An order based upon the decision announced on March 28, 1966, was prepared by appellee's counsel and submitted to the Court on April 6, 1966 (J.A. 329). That order recites that the Brotherhood's motion for supplemental relief filed on December 1, 1965, was heard by the Court on March 28, 1966, and the Court had delivered its opinion on March 28, 1966. The order then declares and decrees as follows:

"Declared and Decreed, that claims or grievances of the Brotherhood of Locomotive Firemen and

Enginemen and the firemen (helpers) it represents, *referred to in the motion*, based on alleged violations, or misapplications of Award of Arbitration Board No. 282, on which Award judgment was entered by this Court on February 28, 1964, are not subject to the compulsory grievance procedure established by section 17 of a certain collective agreement entered into on August 11, 1948 by the Brotherhood of Locomotive Firemen and Enginemen and other labor unions on the one hand and on the other hand by the Southern Pacific Company and numerous other carriers; and such claims or grievances, if otherwise valid, may be enforced without the Brotherhood or the employees it represents first resorting to the procedure established by section 17 of the said 1948 agreement." (J.A. 329.) (Emphasis added.)

The words "referred to in the motion" italicized in the above quotation were added by the District Court to the draft of the order as prepared by appellee's counsel.

In the meantime, to wit, January 17, 1966, the Brotherhood had filed in the District Court in Misc. No. 41-63 a motion for supplemental relief against the Terminal Railroad Association of St. Louis. By that motion the Brotherhood sought appropriate relief for a group of seventy-one C(6) firemen (helpers) who had been discharged from their employment by the Terminal Railroad in a manner unauthorized by the Arbitration Award. The motion concluded with a prayer that the Court order the Terminal Railroad to make proper compensation to the seventy-one firemen (helpers) for the loss of earnings suffered by them as a result of the Terminal's violations of the Award (J.A. 315-317).

The Brotherhood's motion for supplemental relief against the Terminal Railroad was argued to the District Court on April 5, 1966. On April 6, 1966, the District

Court entered an order sustaining the Brotherhood's motion. The order overruled the Terminal Railroad's contention that the claims of the C(6) were outlawed because they had not been processed through the grievance procedure and submitted to the National Railroad Adjustment Board as required by the Section 17 grievance procedure. The pertinent part of the Court's order reads as follows:

"* * * the claims of the said former C(6) firemen (helpers) should not be barred under the circumstances here involved by any failure on their part to invoke or to exhaust the contract grievance procedure established in agreements between the TRRA and the BLF&E; * * *." (J.A. 332.)

An appeal was taken by the Terminal Railroad from the order entered of record on April 6, 1966. That appeal was voluntarily dismissed on May 18, 1966 (J.A. 337).

In the meantime, on April 18, 1966, a motion had been filed in the District Court in Misc. No. 41-63 by the carriers. The moving parties to that motion are described in the motion as follows:

"The Southern Pacific Company and the other carriers represented by the Eastern, Western, and Southeastern Carriers' Conference Committees respectfully move that this Court's Order Granting Motion of Brotherhood of Locomotive Firemen and Enginemen for Supplemental Relief against Southern Pacific Company and Other Carriers," dated April 6, 1966, be amended by adding at the end of the body thereof the following paragraph or its substance." (J.A. 334.) (Emphasis added.)

The amendment proposed by the three Carriers' Conference Committees, if it had been approved by the District Court, would have altered the Court's ruling of April 6,

1966, by providing, in substance, that if any fireman's (helper's) claim or grievance based upon a carrier's alleged violation of the Arbitration Award were filed with the appropriate carrier operating official within the time and in the manner prescribed by the Section 17 grievance procedure, the employee would be deemed to have made an "election of remedies," and if the claim or grievance was not thereafter processed to a conclusion in the manner and within the time prescribed by Section 17, it would become barred, and the Brotherhood could not thereafter include such claim or grievance in a motion for supplemental relief directed to the District Court pursuant to the last paragraph of the injunction entered on May 11, 1964.

The Motion by the three Carriers' Conference Committees to amend the District Court's order of April 6, 1966, was argued to the District Court on June 2, 1966. The Court's decision on that motion was also issued on that date, and is reported at 255 F. Supp. 290. The Court's decision begins with a recital of the carriers that were party to the motion, followed by a statement of the issue posed by that motion, as follows:

"The Court: By its decision of March 28th, 1966 this Court ruled on a motion made by the Brotherhood of Locomotive Firemen and Enginemen that locomotive firemen who had claims for loss of wages or other forms of remuneration caused by failure to employ them on certain days because of violations of Arbitration Award 282 had a choice of remedies, either an administrative remedy prescribed by the collective bargaining agreement or by a judicial proceeding in this court or in other courts that have jurisdiction.

"The carriers involved in that motion have now moved to amend the order so that it would provide, in effect, that if a claimant instituted an administra-

tive remedy and abandoned it before the remedy was concluded, he may not then resort to a judicial remedy." (J.A. 338.)

An order overruling the carriers' motion was entered of record on June 2, 1966 (J.A. 342).

On June 28, 1966, a notice of appeal was filed by the Southern Pacific Company and the Eastern, Western and Southeastern Carriers' Conference Committees. That notice of appeal reads as follows:

"Notice is hereby given that the Southern Pacific Company and the other certain carriers represented by the Eastern, Western and Southeastern Carriers Conference Committees, parties to the above-entitled proceeding, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the 'Order Granting Motion of Brotherhood of Locomotive Firemen and Enginemen for Supplemental Relief against Southern Pacific Company and other Carriers,' dated and entered herein on April 6, 1966, and from the 'Order Denying Carriers' Motion to Amend Order Granting Motion of Brotherhood of Locomotive Firemen & Enginemen for Supplemental Relief against Southern Pacific Company and other Carriers, Entered April 6, 1966,' dated and entered herein on June 2, 1966." (J.A. 343.)

It is on the basis of the foregoing record, and decisions issued and orders entered by the District Court below, that this Court must resolve the question whether the only matter brought before it for decision is, as stated in the opening sentences of the appellants' reply brief, whether the ruling made by the District Court concerning "only two kinds of claims against only one railroad" is a correct ruling.

The appellants would have this Court confine its consideration on this appeal to the "two kinds of claims

against only one railroad" because if this Court affirms the District Court's ruling in that respect only, each one of the railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees, when it is named as the carrier against which a motion for supplemental relief is filed in the District Court, will presumably be free to assert as a defense against such motion the failure of the employees to process their claims and grievances through the Section 17 grievance procedure. And if that defense is rejected, as it has already been rejected on three occasions by the District Court, each carrier against which such motion is directed will be in a position to take an appeal from the District Court's ruling to this Court, thus retrying the same issue repeatedly. By such procedure the carriers will ultimately prevail regardless of the merits of the employees' claims and grievances, because protracting such proceedings by re-trying the same issue will invoke no penalty for the carriers, whereas a working man must work and must receive the wages due him in order to live and support himself and his family.

The Supreme Court has very recently observed:

"* * * in the labor field, as in few others, time is crucially important in obtaining relief." (*N. L. R. B. v. C. & C. Plywood Corp.*, 87 S. Ct. 559, at 565.)

The appellee has no quarrel with the order of April 6, 1966, which overruled the Section 17 defense upon which the Southern Pacific Company had based its refusal to pay the two groups of claims described in the Byron affidavit. The appellee believes, however, that the appeal taken by the carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees from the orders granting the Brotherhood's motion of December 1, 1965, and denying the carriers' motion of April 18,

1966, brings to this Court for review the decision by the District Court that compliance by the employees represented by the Brotherhood with the Section 17 grievance procedure is not a condition precedent to the right of the Brotherhood to apply to the District Court, pursuant to the terms of the May 11, 1964, injunction, for orders requiring carriers to comply with the judgment based upon the Award rendered by Arbitration Board No. 282 and to make appropriate amends to their employees where the carriers have failed to comply with the legal obligations imposed upon them by that judgment.

"An appeal draws in question all rulings of the court that produced the judgment or appeal order designated." 13 Cyc. of Federal Procedure Sec. 60. 94 (P. 472). *Roth v. Hyer*, 142 F. 2d 227; *Automobile Ins. Co. v. Barnes-Manley Wet Wash Laundry Co.*, 168 F. 2d 381; *M. T. Reed Const. Co. v. Virginia Metal Products Co.*, 214 F. 2d 127.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,378

SOUTHERN PACIFIC COMPANY, et al., Appellants,
v.
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,
Appellee.

United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 9 1967

ANSWER TO PETITION BY
APPELLANTS FOR REHEARING

Nathan J. Paulson
CLERK

The appellee is moved to answer appellants' petition for rehearing because the petition raises or suggests four points and argument that should be commented upon or corrected.

I.

On the first page of the petition for rehearing the appellants state that the Court's per curiam opinion, issued October 6, 1967, "holds that individual claims and grievances arising out of alleged violations of the Award by Arbitration Board No. 282 are not subject to Section 3 of the Railway Labor Act (45 U.S.C. Sec. 153)."

Much, or most, of what appellants argue in their petition is predicated on that statement,--that this Court held that violations of Award 282 are not remediable through the procedures of Section 3 of the Railway Labor Act. But this Court expressly did not so hold. On page 3 of the slip opinion, this Court said it was not passing on that question but was holding

only that regardless of whether that procedure was applicable the District Court did not abuse its discretion as a court of equity when, in enjoining the Brotherhood from striking over a misapplication of the Award, it reserved jurisdiction to enforce compliance with the Award or rights arising therefrom.

The appellants pursue their argument on page three of the petition for rehearing as follows:

"Thus, the claims-and-grievance procedure voluntarily established by agreement of the parties applies not only to claims and grievances that may be taken to the National Railroad Adjustment Board under Section 3 of the Railway Labor Act, but to those claims and grievances that may be taken to any 'tribunal having jurisdiction pursuant to law or agreement' This Court has held, of course, that the Court below has 'jurisdiction pursuant to law' of individual claims and grievances arising out of alleged violations of Award 282. On its face, therefore, Section 17 of the 1948 Agreement applies to such claims and grievances, and the Joint Committee established by the parties to decide 'any dispute or controversy arising' over the 'interpretation or application' of that Agreement (JA 288) has not interpreted the Agreement otherwise or even been requested by Appellee to do so." (Emphasis added.)

The appellants continue their argument on page 4 of their petition for rehearing, as follows:

"The mere fact that such claims and grievances need not be processed under Section 3 of the Railway Labor Act (assuming the correctness of this Court's holding to that effect) does not in itself establish that the claims-and-grievance procedure agreed to by the parties need not be followed before judicial relief can be obtained. * * *"

The appellants cite Transcontinental & Western Air v. Koppal, 345 U. S. 653 (1953), and a September 20, 1967, decision by the Court of Appeals for the Sixth Circuit entitled Belanger v. New York Central Railroad Co., 56 CCH Labor Cases No. 12,181, as authority for their conclusion as expressed above.

The point that the appellants are apparently trying to make is that the carriers and three of the national railway labor organizations (one being the Brotherhood of Locomotive Firemen and Enginemen), entered into a national agreement dated June 3, 1949, and later entered into a Memorandum Agreement, dated June 19, 1949, by the terms of which the parties agreed to the establishment of a Joint Committee that "will be a tribunal within the meaning of paragraph (c) of Section 17 of such agreement," (Referring to the August 11, 1948, national agreement.) (JA 288) The intent of the contracting parties, they say, was to sandwich the Joint Committee into the appellate grievance procedure established by Section 17 of the August 11, 1948, national agreement. The appeal to the Joint Committee would follow the decision rendered by the carrier's chief operating officer designated to handle claims and grievances, and it would precede submission of the claim or grievance to a "tribunal having jurisdiction pursuant to law or agreement," meaning the National Railroad Adjustment Board (Footnote 2, p. 3, Appellants' Brief)

The substance of what the appellants are contending appears to be that although the Court has held that claims and grievances arising out of alleged violations of Award 282 need not be submitted to the administrative remedy provided by Section 3 of the Railway Labor Act, that holding does not dispose of the question whether Federal law requires those claims and grievances to be processed through grievance procedure established by an agreement of the parties, up to and including the Joint Committee established by the 1949 national agreement before the claims and grievances may be submitted to the District Court under the reservation of jurisdiction contained in the injunction of May 11, 1964.

The appellants' contention should be overruled for the initial reason that it was not heretofore urged. It is being urged for the first time in their petition for rehearing.

The appellants asserted in the first paragraph of their "Statement of Points," on page 15 of their brief, and again in their "Summary of Arguments," at page 17 of their brief, that the District Court overreached its jurisdiction when it interpreted the language of Section 17 of the August 11, 1948, national agreement for the purpose of deciding whether the reference in paragraph (a) of Section 17 to "all claims and grievances," includes claims and grievances resulting from the carriers' violations of Award 282. The appellants pointed out that the Brotherhood and the carriers had agreed in a June 3, 1949, agreement, also in a June 19, 1948, Memorandum of Understanding supplement to the June 3 agreement (J.A. 288), that a "Joint Committee" established by the 1949 agreement would decide disputes involving the interpretation and application of the provisions of the August 11, 1948. National Agreement. Hence, the argument was that under the doctrine of the Slocum case the District Court exceeded its jurisdiction when it decided that Section 17 should not be interpreted as establishing compulsory grievance procedure for the disposition of employees' claims and grievances resulting from the improper interpretation and application of Award 282. The District Court, according to the appellants, thus committed a judicial invasion of the Joint Committee's jurisdiction.

The appellants now argue in their petition for rehearing, for the first time in this appeal, that the Court should reconsider its decision because the Court failed to consider the fact that the parties have agreed

to vest in the Joint Committee authority as a tribunal in the Section 17 grievance procedure to decide employees' claims and grievances, including those arising under Award 282.

The appellants' contention should be overruled because it comes too late.

The contention of appellants should be rejected for the additional reason that the generally enforced rule to the effect that employees' claims and grievances must be progressed through grievance procedure established by collective agreements before the claims and grievances may be carried to the courts, is subject to an exception that is as well established as the rule itself. That exception is that the grievance procedure need not be exhausted before seeking judicial relief when it is apparent that such effort by the employee would be in vain. United Protective Workers, Local No. 2. v. Ford Motor Co., 194 F. 2d 997 (1951), 223 F. 2d 49 (C.A. 7th, 1955), 48 A.L.R. 2d 419. See also 31 Am. Jur., Labor, Sec. 124.

The exception to the general rule prevails in the instant case for the following reasons. The Joint Committee consists of six persons. (J.A. 288) Three are appointed by the carriers, and three are appointed by the unions, one of whom is the appellee in the instant proceeding. During the enforcement of Award 282 directions to railroad managements instructing them how to interpret and apply Award 282 originated with the three Carriers' Conference Committees located in Chicago, Illinois. The carriers' chief personnel officers passed the instructions received from the Committees down to the carriers' officers that were directly in charge of operations at the railroad division level. Objections to the carriers' improper applications of the Award went directly from the Brotherhood's general chairman on each railroad,

pursuant to instructions from the Brotherhood's chief executive officers, directly to the carrier's chief personnel officers. (J.A. 25, para. (J), and page 173, para. (2))

The disputes regarding the carriers' improper interpretations and applications of Award 282 thus developed directly between the carriers' highest officers in charge of personnel, acting pursuant to instructions issued to them by the carriers' top advisers on labor relations, and the Brotherhood's general chairmen on the respective railroads acting pursuant to instructions from the Brotherhood's Grand Lodge in Cleveland, Ohio.

We offer the observation that in light of the foregoing circumstances, one would indeed be credulous to suppose that the partisan members on the Joint Committee would or could do otherwise than affirm the positions already taken by their superiors on the claims and grievances that arose under Award 282. The appeal of the claims and grievances resulting from the carriers' interpretation and enforcement of Award 282 would, we submit, be a vain effort in the fullest sense of the exception to the general rule requiring exhaustion of grievance procedure.

II.

The appellants assert that the Court has erred in affirming the judgment below because this Court has failed to recognize and enforce the law as established by the Supreme Court's decision in Transcontinental & Western Air v. Koppal, 345 U.S. 653 (1953), and its later decision in Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965).

The Koppal case was an action by a discharged employee who had been employed under a collective agreement negotiated by parties acting pursuant

to the requirements of the Railway Labor Act. The agreement contained rules establishing a grievance procedure, in which the last appellate step was an appeal to a system board of adjustment as authorized by Section 204 of the Railway Labor Act (45 U.S.C. Sec. 184). The jurisdiction of the Koppal case was based upon diversity of citizenship. The Court held that the law controlling the case was state law. The Court also held that the facts and cause of action were similar to those in Moore v. Illinois Central Railroad, 312 U.S. 630 (1940), and, hence, Federal law did not apply and the grievance procedure available under the collective agreement need not be exhausted by the employee before resorting to an action in the courts against his employer, unless the law of the state in which the action was filed required exhaustion of contract grievance procedure before an employee may appeal to the courts for relief.

The Koppal case is no longer law in one important respect. An action to enforce employment rights or duties growing out of a collective agreement that was negotiated pursuant to a duty imposed by Federal law upon employers and representatives of employees by the Railway Labor Act is governed by federal statutory law and federal common law. That development of federal labor law established by the Supreme Court's decisions in International Association of Machinists v. Central Air Lines, Inc., 372 U.S. 682 (1963); Railway Employees Department v. Hanson, 351 U.S. 225 (1956), and Pennsylvania Railroad Company v. Day, 360 U.S. 548 (1959). A federal common law governing the enforcement of collective agreements in other industries not subject to the Railway Labor Act has developed as a result of Supreme Court decisions interpreting Section 301 of the Labor-Management Relations Act of 1947 (29 U.S.C. Sec. 185). Textile Workers Union v. Lincoln Mills of

Alabama, 353 U.S. 448 (1957); Local 24, Int. Bro. Teamsters, etc. v. Oliver, 358 U.S. 238 (1958).

The upshot of the foregoing development of the law is that whether compliance with Section 17 grievance procedure, up to and including appeal to the National Railroad Adjustment Board, is compulsory procedure before resorting to the courts for relief poses a question to be answered according to Federal law.

We have no quarrel with the appellants' statement, appearing at page 5 of their brief, regarding the holding in the case of Republic Steel Co. v. Maddox, 379 U.S. 650 (1965). But when the appellants point to Maddox as authority for their contention that exhausting Section 17 grievance procedure is compulsory under current Federal law applicable to the railway industry with respect to claims growing out of the carriers' application of Award 282, they are advancing an argument that has already been overruled by the decision of the Supreme Court in the case of Walker v. Southern Railway Co., 385 U.S. 196 (1966).

The action in the Walker case was brought by a discharged employee employed in the firemen's craft on the Southern Railway. He sought to recover damages for allegedly having been unlawfully discharged. The District Court sustained Walker's claim and entered a judgment in his favor. The Court of Appeals for the Fourth Circuit reversed.

The firemen's schedule agreement on the Southern Railway contained rules establishing the prevailing grievance procedure culminating in the requirement that the employee must appeal his grievance to the National Railroad Adjustment Board. Walker had not gone that route before going to the courts for relief. The Court of Appeals, considering the decision in the

Maddox case to be controlling, reversed the District Court and ordered Walker's complaint dismissed.

The Supreme Court granted certiorari. Its decision was a reversal of the judgment rendered by the Court of Appeals, and the case was remanded to the District Court for further proceedings.* The Supreme Court thus declined to require Walker to pursue his contract grievance procedure up to and including submitting his claim to the National Railroad Adjustment Board. The Court was persuaded to reach that decision because the delay involved in pursuing that remedy ranged from 7-1/2 to 10 years, a fact well known in the railway industry and to the Congress. The Court's concluding remark in the Walker opinion was as follows:

"The contrast between the administrative remedy before us in Maddox and that available to petitioner persuades us that we should not overrule those decisions [Moore, Slocum and Koppal] in this case."
(385 U.S. 196, at 199.)

In light of the decision by the Supreme Court in the Walker case, we fail to understand the reason for the appellants insisting that the Court in the instant case erred when it declined to require the firemen to process their claims through the Section 17 grievance procedure which included submitting their claims to the National Railroad Adjustment Board.

III.

The appellants criticize the Court's decision on the ground that it is not consistent with the basic theory adopted by this Court in its

* The judgment as remanded to the District Court was subsequently recalled by the Supreme Court and the case then went to the Court of Appeals for the purpose of enabling that court to decide a pending but undecided issue. (87 S. Ct. 1300).

supplemental opinion dated July 31, 1967, issued in the Bangor and Aroostook case, at page 8. That theory was that nothing of the Award itself survived its expiration date, but the work rules resulting from the application of the Award during its lifespan of two years do survive the Award, and "they are deemed to be incorporated into the prior agreements of the parties that themselves endure by virtue of the Railway Labor Act unless and until changed in accordance with that statute."

That theory, or thesis, if we correctly understand the appellants' contention, is said to be inconsistent with the underlying theory of the Court's ruling in the instant case. In the instant case the employees' claims and grievances resulting from the carriers' violations of Award 282 are conceived of as constituting violations of a judgment, instead of being violations of work rules that are not distinguishable (or should not be distinguishable) from violations of work rules that were established by collective agreements entered into by the parties.

This charge of inconsistency, we submit, is not well founded nor possessed of merit because it fails to take into account the fact that the decision in Bangor and Aroostook, and the decision in the instant case, are directed at or in response to wholly dissimilar problems or situations.

The problem that led to the instant proceeding was the problem of compelling carriers to comply with Award 282 during the two years of its existence in keeping with its provisions, and to compel carriers to make proper amends to their employees who suffered loss in wages and loss of employment rights as a result of the carriers' violations, while at the same time denying to employees the use of self-help to achieve those ends. The concept that the work rules brought into being by Award 282 stemmed from a judgment, and that compelling compliance with those work rules by the carriers,

as well as by the employees, should be accomplished by use of the judicial power, was manifestly not inconsistent with the policy exemplified by Public Law 88-108 of imposing government-dictated solutions to labor problems in the railway industry. Neither was it ineffectual, from the carriers' point of view.

The Bangor and Aroostook case, on the other hand, was an action launched by the carriers to obtain from the courts a declaration regarding the source and nature of the work rules, and other elements comprising the labor relations between carriers and the firemen's crafts in the future, following the termination date of Award 282.

There is obviously no practical or legal relationship between the problem that was brought to the courts by the carriers in Bangor and Aroostook, and the problem that drove the Brotherhood to invoke the protective conditions that the District Court had attached to its May 11, 1964, injunction in Misc. No. 41-63, particularly when the carriers' resisted substantially all demands by employees for redress of their lost wages and employment rights caused by the carriers' admitted violations and misapplications of Award 282 by hiding behind the defense that the individual claimants had neglected to pursue and exhaust the Section 17 grievance procedure. We see no practical or legal relationship between the two proceedings, other than that each proceeding had its origin in Award 282.

The appellants say at page 12 of their petition for rehearing --

"* * * The Court should not apply one analysis of the Award in the Bangor and Aroostook case and a contrary analysis of the Award in this case."

We would point out that the Court's analyses of the Award in the two proceedings are not necessarily contrary, simply because they are not the same, when the two proceedings have no common purpose or objective.

IV.

This Court concluded its opinion affirming the rulings rendered by the District Court on March 28, 1966, and April 6, 1966, by declaring--

"Even assuming, but by no means deciding, that the carriers are right that these claims are minor disputes for which the contract provided a usual procedure within Section 3 of the Railway Labor Act, the District Court did not abuse its discretion in establishing a condition that employees injured by the misapplication of the award have available a judicial remedy, and do not have to wait years for Adjustment Board vindication." (Emphasis added.)

The Court thus ruled that the District Court did not exceed its authority as a court of equity when it rejected the carriers' contention that firemen's claims and grievances, caused by the carriers' violations and misapplications of Award 282, should be denied enforcement if the employees failed first to process their claims through the Section 17 grievance procedure, up to and including submission of their claims to the National Railroad Adjustment Board.

We think it appropriate to point out that the appellants' petition for rehearing contains no recital of facts and no reference to any rule or principle of law to support or justify their petition that the Court reconsider its conclusion that the District Court did not abuse its equitable discretion when issuing the ruling from which the appellants are appealing in this proceeding.

The appellants appear inclined to forget the fact that the proceeding designated Misc. No. 41-63 was an action initiated by the carriers; that it was a proceeding invoking the District Court's jurisdiction as a court of equity; that the District Court denied a motion on behalf of the employees in which they asked that the carriers in turn be enjoined to enforce Award 282 in a lawful manner.

The appellants nowhere admit in their petition for rehearing that their defense against the employees' claims and grievances based upon the failure of the employees to first exhaust the Section 17 grievance procedure, is utterly devoid of equitable considerations.

The appellants know, though they do not acknowledge it, that the carriers' defense based upon failure to comply with the Section 17 grievance procedure is a purely technical defense and serves no equitable ends when asserted under the circumstances that prevailed during the two years that Award 282 was in force. It is a fact of common knowledge throughout the railway industry that the top personnel officials representing the carriers and the top Brotherhood officials were continuously at loggerheads during the life of the Award regarding the proper interpretation and application of most of the provisions contained in the Award. Members of Arbitration Board No. 282 reconvened no less than 14 times during the life of the Award to render a total of about 350 interpretations of the Award.

The provisions of Section 17 require employees to file with a carrier's operating officers written claims and grievances involving violations of their employment rights within sixty days from the date of the occurrence on which the claim or grievance is based. (Footnote, p. 4, Appellants' Brief.) Such requirement, under the circumstances that prevailed during the period the Award was in effect, would manifestly have been an impossible requirement for individual employees to comply with. The prevailing circumstances as depicted in the Byron affidavit amply illustrate the truth of that conclusion.

The appellants persist in urging the failure of the employees to process their claims and grievances through the Section 17 grievance procedure as a defense against the employees' claims and grievances, not because the failure to process them subjected the carriers to disadvantages or inequitable circumstances. The appellants persist in asserting the Section 17 defense simply because if it were sustained by the Courts, the undeniable effect would be a virtual nullification of all obligations on the part of the carriers to make amends for the losses the carriers caused thousands of firemen during the two years Award 282 was enforced.

We submit that if the District Court had sustained the carriers' defense against the employees' claims and grievances based upon their failure to process their claims through the Section 17 grievance procedure before going to the District Court for help, that ruling would have approached far closer to being an abuse of judicial discretion than is the ruling by the District Court that this Court has sustained.

We invite the Court's attention a second time to the recent decision of the Supreme Court in Walker v. Southern Railway Company. As previously stated, that case was an action at law by a discharged locomotive fireman seeking to recover damages for having been unlawfully discharged. And the Supreme Court declined to follow its earlier ruling in the Maddox case because the several years of delay that would have ensued in processing Walker's claim through the contract grievance procedure, which included submission of his claim to the National Railroad Adjustment Board, was simply an unreasonable obstacle for a court of law to require an employee to cope with when seeking a determination of his rights under a contract of employment.

The appellants challenge by their petition for rehearing to a similar ruling by this Court, rendered in a proceeding involving equity jurisprudence, deserves scant consideration by this Court.

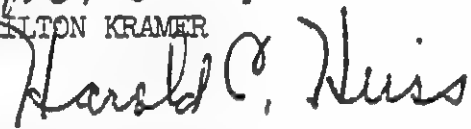
For the reasons herein set forth, we submit that the appellants' petition for rehearing be denied.

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CERTIFICATE OF SERVICE

I certify that the foregoing Answer was served on Petitioner by mailing copies on November 9, 1967 to Francis M. Shea, Esq., Shea and Gardner, 734 15th Street, N. W., Washington, D. C., counsel for Petitioner.


Milton Kramer

In the
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

No. 20,378

FILED OCT 20 1967

Nathan J. Paulson
CLERK

SOUTHERN PACIFIC COMPANY, ET AL.,
Appellants.

v.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN,
Appellee.

PETITION BY APPELLANTS FOR REHEARING

As we understand the Court's Opinion of October 6, 1967, the Court holds that individual claims and grievances arising out of alleged violations of the Award by Arbitration Board No. 282 are not subject to Section 3 of the Railway Labor Act (45 U.S.C. §153), but may be remedied by the court below pursuant to its reservation of jurisdiction in the proceeding in which the judgment upon Award 282 was entered so as to permit the parties to apply to that court "for such further orders as may be necessary or appropriate for the construction, carrying out or enforcement of this order or of the judgment heretofore entered in this proceeding upon the Award by Arbitration Board No. 282, or any legal obligation resulting therefrom." Upon the basis of that holding, the Court affirmed the orders entered by the court below in this case.

While we disagree with the holding that Section 3 of the Railway Labor Act does not apply to individual claims and grievances arising out of alleged violations of Award 282, we shall not reargue that matter, except to point out one additional consideration at pp. 12-14 below. It seems to us, however, that the holding is not sufficient to dispose of all of the issues in the case and that the Court's action in affirming the judgment below is inconsistent with certain holdings by the Court in Brotherhood of Locomotive Firemen and Enginemen v. Bangor and Aroostook Railroad Company, et al., Nos. 20,192, 20,193, 20,215 and 20,216 (hereinafter referred to as the "Bangor and Aroostook case") in opinions rendered (May 12, 1967 and July 31, 1967) after the briefs in this case were filed.

Assuming arguendo that the Court is correct in its view that Section 3 of the Railway Labor Act is inapplicable to individual claims and grievances arising out of alleged violations of Award 282 and that the court below may provide a remedy pursuant to its reservation of jurisdiction, it does not necessarily follow that the claims-and-grievance procedure agreed upon by the parties need not be complied with prior to applying to the court for such a remedy. In Section 17 of the National Rules Agreement entered into on August 11, 1948, the parties agreed (JA 266) that "[a]ll claims or grievances arising on and after November 1, 1948 shall be handled" in a specified manner up to the "highest officer" of the carrier "designated to handle claims and grievances," and that:

"All claims or grievances involved in a decision of the highest officer shall be barred unless within six months from the date of said officer's decision proceedings are instituted by the

employee or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved."

Thus, the claims-and-grievance procedure voluntarily established by agreement of the parties applies not only to claims and grievances that may be taken to the National Railroad Adjustment Board under Section 3 of the Railway Labor Act, but to those claims and grievances that may be taken to any "tribunal having jurisdiction pursuant to law or agreement" This Court has held, of course, that the Court below has "jurisdiction pursuant to law" of individual claims and grievances arising out of alleged violations of Award 282. On its face, therefore, Section 17 of the 1948 Agreement applies to such claims and grievances, and the Joint Committee established by the parties to decide "any dispute or controversy arising" over the "interpretation or application" of that Agreement (JA 288) has not interpreted the Agreement otherwise or even been requested by Appellee to do so.

What justification can there be for excusing Appellee and its members from complying with the procedure which Appellee agreed to on behalf of its members, prior to seeking relief from the court below pursuant to its reservation of jurisdiction? Neither the language of that reservation of jurisdiction nor the comments made by Judge Holtzoff at the time purport to except claims and grievances arising out of alleged violations of the Award from the procedure agreed to by the parties and that issue was not raised or considered at the time (JA 18-19; 229 F. Supp., at 259). No one has pointed to any provision of P.L. 88-108 or to any legislative history of

that statute which indicates that the Congress intended to exempt claims and grievances arising out of alleged violations of the Award from the agreed procedure, and Board 282 has ruled (JA 14-17) that its Award "contains no provision dealing with that subject," although the Award does provide that all "agreements . . . with respect to the employment of firemen (helpers) shall continue undisturbed except as modified by the terms" of the Award, and "the Board, in a number of . . . instances, called [the parties] attention to the availability of settlement procedures under their own agreements or under Section 3 of the Railway Labor Act."

The mere fact that such claims and grievances need not be processed under Section 3 of the Railway Labor Act (assuming the correctness of this Court's holding to that effect) does not in itself establish that the claims-and-grievance procedure agreed to by the parties need not be followed before judicial relief can be obtained. The Supreme Court has held that a person who has been discharged from employment by a carrier is not required to proceed under Section 3 of the Railway Labor Act if he contends that such discharge was wrongful, and may sue in court to recover damages for wrongful discharge. Moore v. Illinois Central R. Co., 312 U.S. 630 (1941). But the Supreme Court has also held, in Transcontinental Air v. Koppal, 345 U.S. 653, 654 (1953), that the plaintiff in such an action (which is grounded upon state law) "must show that he has exhausted his administrative remedies, under his contract of employment . . . , provided the applicable state law so requires." In the Koppal case, the Supreme Court affirmed the dismissal of a complaint under state law to recover damages for wrongful discharge, because the plaintiff

had not complied with a claims-and-grievance procedure agreed to by the carrier and the union representing the plaintiff which is very similar to the procedure agreed to by the parties to this case. Id., at 659-660.^{1/} The Koppal rule has been applied to deny recovery for an alleged wrongful discharge because of the plaintiff's failure to comply with the claims-and-grievance procedure established by a railroad and the union representing the plaintiff, prior to suing in court, as recently as the September 20, 1967 decision in Belanger v. New York Central Railroad Company, 56 CCH Labor Cases ¶12,181 (6th Cir.).

The wrongful discharge claims involved in Koppal and similar cases were, as noted, grounded upon state law, while a claim arising out of an alleged violation of Award 282 is grounded upon federal law. But there is no provision or policy of federal law permitting an employee to recover in court upon an alleged claim or grievance prior to complying with a claims-and-grievance procedure established by agreement between his employer and his union. On the contrary, the Supreme Court has declared that "federal labor policy requires that individual employees wishing to assert contract grievances must attempt

^{1/} According to the opinion in the Koppal case at the cited pages, the agreement between the carrier and the union recited that it had been entered into "in accordance with the provisions of Title II of the Railway Labor Act," provided for a three-step procedure (with specified time limits) for handling the claim or grievance up to "the chief operating officer of the company," and, if not disposed of on the property in that manner, provided for reference of the claim "to the system board of adjustment or, by mutual agreement, to arbitration." We note that the agreement involved in that case is narrower than the agreement involved here, in that it could be argued from the face of the agreement that it contemplated that the claims and grievances were of the kind that would eventually have to be submitted to a system board of adjustment (the equivalent for air carriers of the National Railroad Adjustment Board), while the agreement involved here expressly applies to claims and grievances that may eventually be submitted to any "tribunal having jurisdiction pursuant to law or agreement."

use of the contract grievance procedure agreed upon by employer and union as the mode of redress." Republic Steel Corp. v. Maddox, 379 U.S. 650, 652 (1965). In the Bangor and Aroostook case, this Court held, among other things, that "the work rules resulting from the Award [by Arbitration Board No. 282] . . . are deemed to be incorporated into the prior agreements of the parties" (Supplemental Opinion of July 31, 1967, at 8.)

The claims involved in this case fall into two categories. One group of claims arises out of the failure of the Southern Pacific Company to use a fireman on a locomotive (the Orange Switcher) during a period following an inadvertent omission to list the crew involved as one not requiring a fireman, under the procedure established in Paragraph II-B(3) of the Award. The other group of claims arises out of the use by the Southern Pacific of road engines for certain switching operations, which engines were not equipped with deadman controls and did not include a fireman in their crews. See Brief for Appellants, at 7-11. Throughout this litigation, the parties have proceeded upon the basis of a common understanding that both groups of claims are based upon violations of rules established by Award 282, rather than of rules established by the National Diesel Agreement or other collective bargaining agreements. ^{2/} That was also the understanding of the court below, ^{3/} and it

^{2/} While the Southern Pacific doubted that the Award was violated by the use of road engines for switching operations, without a firemen or deadman control, it was willing to assume such a violation for purpose of disposing of the claims and paid those claims which were processed in the manner required by Section 17 of the Agreement of August 11, 1948. See Brief for Appellants, at 8-9.

^{3/} "Specifically, the claims that are enumerated in the papers attached to the motion are claims of firemen who alleged that they would have been employed on certain days if the carriers had not operated certain engines without a fireman in violation of the terms of Award 282" (Opinion of the District Court, JA 321).

appears to have been the understanding of this Court in writing its Opinion of October 6, 1967.

If the July 31, 1967 Supplemental Opinion of this Court in the Bangor and Aroostook case is correct, however, one group of the claims must be grounded upon violation of rules established by the National Diesel Agreement rather than by the Award and the basis for the other group of claims is unclear. Before demonstrating that fact and so that there can be no doubt whatsoever about the matter, we want to make unmistakably clear that we vigorously disagree with the Court's analysis of the Award in that Supplemental Opinion, essentially for the reasons set forth in the Petition by Appellees in Nos. 20,192 and 20,193 and by Appellants in Nos. 20,215 and 20,216 for Rehearing and for Clarification, and that nothing said herein is intended in any way to indicate otherwise. But if the relevant holdings in the Bangor and Aroostook case are adhered to by this Court and become final, we submit that the Court should not decide this case upon the basis of an understanding that is contradicted by those holdings.

Very generally, the Bangor and Aroostook case involved the issue of what rules were to apply following the expiration of the firemen's provisions of Award 282 on March 31, 1966; the carriers contended that the rules as modified by the Award continued to apply until changed in accordance with the Railway Labor Act, while the BLF&E contended that the National Diesel Agreement and other rules in effect prior to the Award automatically were restored upon expiration of the Award and continued to apply thereafter until changed in

accordance with the Railway Labor Act. In its initial opinion in that case,^{4/} this Court held that the "mandate of the Railway Labor Act requires that the work rules in effect on any particular day shall also be in effect the following day--beyond the power of either party to institute a unilateral modification--subject to change only in accordance with the procedures prescribed by the Act," and that this principle "applies even though the work rules are established by an arbitration award of limited duration." Opinion of May 12, 1967, at 17. The Court adhered to that ruling in its supplemental opinion, stating that "the work rules resulting from the Award . . . endure, by virtue of the Railway Labor Act; they are deemed to be incorporated into the prior agreements of the parties that themselves endure by virtue of the Railway Labor Act unless and until changed in accordance with that statute." Supplemental Opinion of July 31, 1967, at 8.

The directly pertinent aspect of the Bangor and Aroostook case is the Court's analysis of the Award, in its supplemental opinion, for purposes of determining what "work rules" were established so as to continue in effect after expiration of the Award until changed in accordance with the Railway Labor Act. The Court concluded "that the provisions in the Award for establishing new firemen levels did not constitute 'work rules' in the classic sense, as we have used and applied that term, but instead are more accurately described as procedures for establishing new work rules," which

^{4/} Both the initial and supplemental opinions in the Bangor and Aroostook case also related in part to other litigation (commonly referred to as the Akron & Barberton Belt case) involving the crew-consist aspects of Award 282, the cases having been heard and decided together by the Court.

procedures "had no effectiveness after the expiration of the Award." Supplemental Opinion of July 31, 1967, at 10-11. Rather, so the Court held, the requirement of the National Diesel Agreement that a fireman be used on all locomotives was continued by Award 282 "until changed in accordance with the Award," and such changes were effected and new work rules were established with respect to particular crews when such crews were "listed" by a carrier and not "vetoed" by the union pursuant to Part II-B of the Award. "For two years plus, the carriers had the machinery for proposing, at three months intervals, the crews that they thought could safely and efficiently dispense with firemen positions. The fruits of these notices and negotiations, after adjustment for the Union's ten percent retention, effected what must be regarded as new 'rules' applicable to the particular runs involved" which continued to apply after expiration of the Award. Id., at 11. This analysis of the Award was the basis for holdings in the Bangor and Aroostook case which are favorable to the BLF&E--that the National Diesel Agreement and its requirement of a firemen on each locomotive applies to "any new runs created after Award 282" expired and to crews in states where valid "full crew" laws are repealed after expiration of the Award. Id., at 12-13.

Under the Court's analysis of the Award in the Bangor and Aroostook case, the so-called Orange Switcher group of claims undoubtedly involved violations of the National Diesel Agreement rather than of the Award. When the time for an interim listing of crews under Paragraph II-B(3) of the Award arrived and that locomotive was being operated by the Southern Pacific, the carrier neglected to list the crew assigned to that locomotive but did not use a firemen on the crew. Hence, under the Bangor and Aroostook analysis, the carrier did not invoke

the "procedures" established by the Award so as to establish a new "work rule" for that crew, the National Diesel Agreement continued to apply thereto, and the carrier violated the National Diesel Agreement when it operated the locomotive without a fireman on the crew.^{5/} We do not believe that the Court has questioned or will question the fact that both the claims-and-grievance procedure established by the parties in their 1948 agreement and Section 3 of the Railway Labor Act apply to claims and grievances arising out of violations of the National Diesel Agreement, and certainly the decisions of the Supreme Court are clear in that regard.^{6/}

The status of the second group of claims under the Court's analysis of the Award in the Bangor and Aroostook case is more difficult, since those

^{5/} Southern Pacific commenced operating the Orange Switcher on August 1, 1964, but was not required to list its crew under Paragraph II-B(3) of the Award (or else use a fireman on the crew) until September 3, 1964. Board 282 has ruled that a fireman need not be used upon a newly-established crew during the interval between the establishment of the crew and the next listing under Paragraph II-B(3). Answer to BLF&E Question No. 6(b). See JA 213-214. Hence, the claims filed by the BLF&E are limited to the period between September 3, 1964 and September 30, 1964 (when the carrier ceased operating the Orange Switcher). See JA 256-257. One of the defects in the Bangor and Aroostook analysis of the Award, we believe, is the failure of that analysis adequately to account for the Board's interpretation of the Award in answer to BLF&E Question No. 6(b). But since this case does not involve any claims for the period between the date on which the crew was established and the date on which the next list under Paragraph II-B(3) was served, that defect is not directly involved here.

^{6/} E.g., Locomotive Eng'rs. v. L. & N. R. Co., 373 U.S. 33 (1963); Pennsylvania R. Co. v. Day, 360 U.S. 548 (1959); Slocum v. Delaware, L. & W. R. Co., 339 U.S. 239 (1950); Order of Conductors v. Pitney, 326 U.S. 561 (1946). Of course, the employees involved here were not discharged so as to come within the exception created by the Moore case permitting suits for wrongful discharge to be brought under state law. See p. 4, supra, and Walker v. Southern R. Co., 385 U.S. 196 (1966).

claims directly expose one of the situations in which we believe that analysis to be inadequate to account for what actually occurred under the Award, and thus illustrate the defective nature of that analysis. The crews involved in those claims had been listed by the carrier and had not been vetoed by the union, so that, under the Bangor and Aroostook analysis, the National Diesel Agreement has been modified and a new rule established with respect to those crews whereby firemen are not required to be used. Any requirement for the use of a firemen, so as to give rise to the claims, would have to come from the provision in Paragraph II-B(5) of the Award (JA 7) that "no yard locomotive shall be operated without a fireman (helper) unless and until it is equipped with a deadman control in good operating condition." But that would mean that Part II-B of the Award in general and Paragraph (5) thereof in particular directly modified the National Diesel Agreement and established new work rules, contrary to the analysis by this Court in Bangor and Aroostook.

We emphasize once again that we wholeheartedly disagree with the Court's analysis of the firemen's aspects of the Award in the Bangor and Aroostook case. We raise the matter here not because we believe that analysis to be correct, but because we believe that justice requires an even-handed application of that analysis regardless of who may be benefited or harmed if it is adhered to in the Bangor and Aroostook case. In this regard, we point out that, in a September 21, 1967 Memorandum and Order in the Bangor and Aroostook case, the Court ordered that:

" . . . the carriers' petition of August 15, 1967 [for rehearing and for clarification] is denied, without prejudice however to the Board's [Board 282] seeking leave within thirty days from the date of this order to submit an amicus curiae a showing of respects, if any there be, in which the opinions of this court are inconsistent with the understanding of Board 282 as to the proper meaning and applicability of its Award. Issuance of the mandate will be stayed for thirty days."

We are hopeful that the Court will reconsider its analysis of the Award in the Bangor and Aroostook case as a result of further proceedings in that case, in which event this aspect of this petition for rehearing can be disregarded. But unless and until that is done, the Court should not apply one analysis of the Award in the Bangor and Aroostook case and a contrary analysis of the Award in this case.

There is one other point which we believe can properly be raised in this petition for rehearing. In its Opinion of October 6, 1967, the Court assumed (without deciding) that the claims involved constitute minor disputes that normally come within Section 3 of the Railway Labor Act, in holding (pp. 3-4) that "the District Court did not abuse its discretion in establishing a condition that employees injured by misapplication of the Award have available a judicial remedy" In support of that holding, the Court noted (p. 3) that Locomotive Engineers v. M.-K.-T. R. Co., 363 U.S. 528 (1960), establishes the "general power of an equity court to impose conditions on those who seek equitable relief . . . where an injunction is sought to enforce the provisions of the Railway Labor Act."

It is quite true that the Supreme Court, in the M.-K.-T. case, held that a district court, in enjoining a strike over a minor dispute pending its disposition under Section 3 of the Railway Labor Act, "is free to exercise the

typical powers of a court of equity . . . to impose conditions requiring maintenance of the status quo." 363 U.S., at 531. But the Supreme Court also emphasized that "the federal courts ought not to act in such a way as to infringe upon the jurisdiction of the [National Railroad Adjustment] Board," that "there was no determination of the merits of the dispute by the District Court," and that the trial "judge was scrupulous to avoid encroaching upon the jurisdiction of the" National Railroad Adjustment Board. 363 U.S., at 532-533. Thus, the Supreme Court held no more than "that the conditions are proper . . . , at least where they are designed not only to promote justice, but also to preserve the jurisdiction of the Board." 363 U.S., at 534.

The implication of the M.-K.-T. case, therefore, is that a district court may not condition an injunction so as to infringe upon the jurisdiction of the National Railroad Adjustment Board to determine the merits of individual claims and grievances, even if such a condition might otherwise be deemed to be appropriate. See Westchester Lodge 2186, Etc. v. Railway Express Agency, 329 F.2d 748, 752-753 (2d Cir., 1964), which affirmed a dismissal of a claim for damages since the "District Court plainly has no jurisdiction to determine the merits of the dispute by interpreting the contract," while remanding for a determination of whether a status quo injunction should issue in a minor dispute under the theory of the M.-K.-T. case. Certainly, the general equity power to condition an injunction so as "to do justice between the parties" invoked by the Supreme Court in M.-K.-T. (363 U.S., at 531-532) does not extend to conditions which invade the jurisdiction of an administrative agency.

This is shown by Central Kentucky Co. v. Comm'n, 290 U.S. 264 (1933), which is one of the cases cited in M.-K.-T. (368 U.S., at 532, fn. 4) for the existence of such a general power. While affirming the general "power of a court of equity, in the exercise of a sound discretion, to grant, upon equitable conditions, the extraordinary relief to which a plaintiff would otherwise be entitled, without condition" (290 U.S., at 271), the Supreme Court, in Central Kentucky, held that there "are nevertheless some limitations upon the extent to which a federal court of equity may properly go in prescribing such conditional relief, which are inherent in the nature of the jurisdiction which it exercises" (290 U.S., at 271). Thus, it was improper for a court to condition an injunction restraining enforcement of an invalid rate for the sale of natural gas upon consent to a rate deemed by the court to be appropriate, because such "interference with the legislative function [of an administrative agency to fix just and reasonable rates] is not a proper exercise of the discretionary powers of a federal court of equity" (290 U.S., at 272). See, also, Ventura Consolidated Oil Fields v. Rogan, 86 F.2d 149, 154-155 (9th Cir., 1936). We submit that it also "is not a proper exercise of the discretionary powers of a federal court of equity" to interfere with the function of the National Railroad Adjustment Board to determine the merits of minor disputes, and that the "limitations upon the extent to which a federal court of equity may properly go in prescribing. . . conditional relief" are exceeded when that is done.

For the reasons stated above, we request the Court to grant a rehearing of this case and to reverse the judgment or order entered below.

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH

I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for purposes of delay.

Francis M. Shea

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Petition for Rehearing has been served upon Appellee by mailing copies, this 20th day of October 1967, to Milton Kramer, Schoene & Kramer, 1625 K Street, N.W., Washington, D.C., attorney for Appellee.

Richard T. Conway